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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

10 TULALIP TRIBES,

11 Plaintiff,

12 v.

13 JUUL LABS, INC.; ALTRIA GROUP, INC.;  
14 ALTRIA CLIENT SERVICES LLC; ALTRIA  
15 GROUP DISTRIBUTION COMPANY; PHILIP  
16 MORRIS USA INC.; JAMES MONSEES; ADAM  
BOWEN; NICHOLAS PRITZKER; HOYOUNG  
HUH; AND RIAZ VALANI,

17 Defendants.

No.

**COMPLAINT**

**JURY TRIAL DEMANDED**

28 PLAINTIFF'S COMPLAINT

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## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	JURISDICTION AND VENUE.....	5
III.	PARTIES .....	6
IV.	GENERAL FACTUAL ALLEGATIONS.....	12
A.	Each Defendant Was Instrumental in Seeking to Develop and Market the Blockbuster Sequel to Combustible Cigarettes, the “Most Successful Consumer Product of All Time.” .....	12
B.	Defendants’ Strategy Was to Create a Nicotine Product That Would Maximize Profits Through Addiction. ....	21
1.	Defendants Understood that the “Magic” Behind Cigarettes’ Stratospheric Commercial Success Was Nicotine Addiction. ....	21
2.	Following the Cigarette Industry Playbook, Defendants Sought to Market a Product that would Create and Sustain Nicotine Addiction, but Without the Stigma Associated with Cigarettes .....	25
3.	Defendants Sought to Position JLI for Acquisition by a Major Cigarette Company.....	31
C.	JLI and Bowen Designed a Nicotine Delivery Device Intended to Create and Sustain Addiction. ....	39
1.	JLI and Bowen Made Highly Addictive E-Cigarettes Easy for Young People and Non-Smokers to Inhale.....	40
2.	JLI’s Initial Experiments Measured Non-Smokers’ “Buzz” Levels and Perceptions of Throat Harshness. ....	41
3.	JUULs Rapidly Deliver Substantially Higher Doses of Nicotine than Cigarettes.....	44
4.	JLI and the Management Defendants Knew That JUUL was Unnecessarily Addictive Because It Delivered More Nicotine Than Smokers Needed or Wanted.....	51
5.	JUUL’s Design Did Not Look Like a Cigarette, Making it Attractive to Non-Smokers and Easy for Young People to Use Without Detection. ....	54

1	6.	JLI Enticed Newcomers to Nicotine with Kid-Friendly Flavors	
2		Without Ensuring the Flavoring Additives Were Safe for	
3		Inhalation. ....	59
4	a.	JLI Develops Flavored JUUL Products That Would	
5		Appeal to Youth.....	59
6	b.	Defendants Developed and Promoted the Mint Flavor and	
7		Sought to Preserve its Market.....	64
8	(i)	JLI Manipulates Chemistry of Mint JUUL Pods. ....	66
9	c.	JLI's Youth Surveillance Programs Confirmed that Mint	
10		JUUL Pods are Preferred by Teens.....	66
11	D.	Defendants Developed and Implemented a Marketing Scheme to Mislead	
12		Users into Believing that JUUL Products Contained Less Nicotine Than	
13		They Actually Do and Were Healthy and Safe. ....	70
14	1.	The Defendants Knowingly Made False and Misleading	
15		Statements and Omissions Concerning JUUL's Nicotine Content.....	70
16	2.	JLI, the Management Defendants, and Altria Transmitted,	
17		Promoted and Utilized Statements Concerning JUUL's Nicotine	
18		Content that They Knew Was False and Misleading. ....	77
19	3.	Defendants Used Food and Coffee Themes to Give False	
20		Impression that JUUL Products Were Safe and Healthy.....	83
21	4.	JLI's "Make the Switch" Campaign Intentionally Misled and	
22		Deceived Users to Believe that JUUL Is a Cessation Device.....	85
23	5.	JLI, Altria, and Others in the E-Cigarette Industry Coordinated	
24		with Third-Party Groups to Mislead the Public About the Harms	
25		and Benefits of E-Cigarettes. ....	99
26	a.	The American Vaping Association.....	99
27	b.	Vaping360 .....	102
28	c.	Foundation for a Smoke-Free World .....	104
	d.	Vapor Technology Association .....	106
	e.	Retailer Lobbying .....	106
	6.	Altria Falsely Stated That It Intended to Use Its Expertise in	
		"Underage Prevention" Issues to JLI .....	107

1	E.	Defendants Targeted the Youth Market.....	109
2	1.	JLI Emulated the Marketing of Cigarette Companies.....	109
3	2.	The Management Defendants Intentionally Marketed JUUL to	
4		Young People.....	112
5	3.	JLI Advertising Exploited Young People’s Psychological	
6		Vulnerabilities.....	116
7	4.	JLI Pushed the Vaporized Campaign Into Youth Targeted	
8		Channels.....	121
9	a.	JLI Placed Its Vaporized Ads on Youth Oriented	
10		Websites and Media.....	121
11	b.	JLI Used Influencers and Affiliates to Amplify Its	
12		Message to a Teenage Audience.....	123
13	c.	JLI Used Viral Marketing Techniques Known to Reach	
14		Young People.....	127
15	5.	JLI Targeted Youth Retail Locations.....	131
16	6.	JLI Hosted Parties to Create a Youthful Brand and Gave Away	
17		Free Products to Get New Users Hooked.....	132
18	7.	The Management Defendants’ Direction of and Participation in	
19		JLI and in the Youth Marketing Schemes.....	137
20	a.	The Management Defendants, and in particular Pritzker,	
21		Valani, and Huh, controlled JLI’s Board at relevant times...	137
22	b.	Pritzker, Huh, and Valani were active, involved board	
23		members.....	140
24	c.	The Management Defendants, and in particular Bowen,	
25		Monsees, Pritzker, Valani, and Huh, oversaw and directed	
26		the youth marketing scheme.....	141
27	d.	Pritzker, Huh, and Valani Were Able to Direct and	
28		Participate in the Youth Marketing Because They Seized	
		Control of the JLI Board of Directors.....	149
	8.	Pritzker, Valani, and Huh continued to exercise control over and	
		direct the affairs of JLI even after a new CEO was appointed.....	154
	9.	Pritzker and Valani directed and controlled JLI’s negotiations	
		with Altria.....	158

1	10.	JLI and the Management Defendants Knew Their Efforts Were	
2		Wildly Successful in Building a Youth Market and Took	
3		Coordinated Action to Ensure That Youth Could Purchase JUUL	
4		Products. ....	160
5	a.	JLI’s Strategy Worked. ....	160
6	b.	JLI Closely Tracked Its Progress in Reaching Young	
7		Customers through Social Media and Online Marketing.....	162
8	11.	JLI Worked with Veratad Technologies To Expand Youth Access	
9		to JUUL Products. ....	166
10	12.	JLI Engaged in a Sham “Youth Prevention” Campaign.....	177
11	13.	The FDA Warned JUUL and Others That Their Conduct is	
12		Unlawful .....	180
13	14.	In Response to Regulatory Scrutiny, Defendants Misled the	
14		Public, Regulators, and Congress that JLI Did Not Target Youth....	182
15	F.	Altria Provided Services to JLI to Expand JUUL Sales and Maintain	
16		JUUL’s Position as the Dominant E-Cigarette.....	188
17	1.	Before Altria’s Investment in JLI, Altria Knew JLI Was	
18		Targeting Youth. ....	188
19	2.	Altria Worked with Pritzker and Valani to Secure Control of JLI	
20		and to Exploit JLI for Their Mutual Benefit.....	190
21	3.	Altria Participated in and Directed the Fraudulent Acts of JLI	
22		Designed to Protect the Youth Market for JUUL .....	202
23	a.	Altria Participated in and Directed JLI’s Make the Switch	
24		Campaign.....	202
25	b.	Altria Participated in and Directed JLI’s Fraudulent	
26		Scheme to Keep Mint on the Market. ....	203
27	4.	JLI, the Management Defendants and Altria Coordinated to	
28		Market JUUL in Highly-Visible Retail Locations .....	205
	5.	Altria Works with the Management Defendants to Direct JLI’s	
		Affairs and Commit Fraud. ....	206
	a.	Altria Installs Its Own Executives into Leadership	
		Positions to Direct the Affairs of JLI. ....	208

1	b.	Altria Furthered the JLI Enterprise by Participating in and	
2		Directing the Marketing and Distribution of JUUL	
3		Products.....	214
4	G.	JLI, Altria, and Others Have Successfully Caused More Young People to	
5		Start Using E-Cigarettes, Creating a Youth E-Cigarette Epidemic and	
6		Public Health Crisis. ....	223
7	1.	Defendants’ Scheme Caused Users, Including Minors, to be	
8		Misled into Believing that JUUL was Safe and Healthy.....	224
9	2.	Use of JUUL by Minors Has Skyrocketed .....	225
10	H.	JLI Thrived Due to Extensive Efforts to Delay Meaningful Regulation of	
11		its Products .....	231
12	1.	E-Cigarette Manufacturers Successfully Blocked the Types of	
13		Regulations that Reduced Cigarette Sales, Creating the Perfect	
14		Opportunity for JLI.....	231
15	2.	JLI, the Management Defendants, and Altria Defendants	
16		Successfully Shielded the Popular Mint Flavor from Regulation.....	235
17	3.	In Response to the Public Health Crisis Created by JUUL, the	
18		FDA Belatedly Tried to Slow the Epidemic. ....	245
19	4.	The Government’s Efforts to Address the JUUL Crisis Were Too	
20		Late and the Damage Has Already Been Done.....	246
21	V.	GOVERNMENT ENTITY FACTUAL ALLEGATIONS.....	248
22	A.	E-cigarette Use in Schools .....	248
23	B.	JUUL and Indian Tribes.....	260
24	C.	Impact of the Youth E-Cigarette Crisis on Plaintiff Tulalip Tribes .....	263
25	D.	No Federal Agency Action, Including by the FDA, Can Provide the	
26		Relief Plaintiff Seeks Here. ....	267
27	VI.	CAUSES OF ACTION.....	268
28	COUNT ONE — VIOLATIONS OF THE WASHINGTON PUBLIC NUISANCE		
	LAW, RCW 7.48.010 <i>ET SEQ.</i> .....		268
	COUNT TWO — VIOLATIONS OF THE RACKETEER INFLUENCED AND		
	CORRUPT ORGANIZATIONS ACT (“RICO”).....		273
	1.	Violation of 18 U.S.C. § 1962(c) .....	273

1	a.	JLI is an Enterprise Engaged in, or its Activities Affect,	
2		Interstate or Foreign Commerce .....	273
3	b.	“Conduct or Participate, Directly or Indirectly, in the	
4		Conduct of Such Enterprise’s Affairs” .....	274
5	c.	“Pattern of Racketeering Activity” .....	292
6	d.	Plaintiff Has Been Damaged by the Enterprise	
7		Defendants’ RICO Violations .....	303
8	2.	Violations of 18 U.S.C. § 1962(d).....	305
9		PRAYER FOR RELIEF.....	308
10		JURY TRIAL DEMANDED.....	309

## I. INTRODUCTION

1. The battle to end nicotine addiction and its associated diseases and death has consumed our nation's public health resources for more than half a century. After five decades of tireless efforts by public health advocates, litigators, and regulators, the war on tobacco was on the path to victory. By 2014, rates of smoking and nicotine addiction in this country were finally at an all-time low, particularly among teenagers. Until now. The United States, closer than ever to consigning the nicotine industry to the dustbin of history, now faces a youth nicotine epidemic of historic proportions.

2. JUUL product use became rampant among the nation's youth, with the percentage of 12th graders who reported consuming nicotine almost doubling between 2017 and 2018. In 2019, more than five million middle and high school students reported current use of e-cigarettes, including more than one in every four high schoolers. Consistent with this national trend, youth e-cigarette consumption rates in Tulalip Tribes are at concerning high levels. Between 2016 and 2018, the percentage of 12<sup>th</sup> grade students in Snohomish County, the area surrounding the Tulalip Tribes, who reported using an e-cigarette in the past thirty days rose from 20% to 30%. The Surgeon General has warned that this new "epidemic of youth e-cigarette use" could condemn a generation to "a lifetime of nicotine addiction and associated health risks." The swift rise in a new generation of nicotine addicts has overwhelmed parents, schools, and the medical community (including public health departments) on the front lines dealing with this crisis, drawing governmental intervention at nearly every level—but it's too little, too late.

3. This public health crisis is no accident. What had been lauded as progress in curbing cigarette use, JUUL Labs Inc.'s (JLI) co-founders Adam Bowen and James Monsees viewed as opportunity. Seizing on the decline in cigarette consumption and the lax regulatory environment for e-cigarettes, Bowen, Monsees, and investors in their company sought to introduce nicotine to a whole new generation, with JLI as the dominant supplier. To achieve that common purpose, they knew they



1 would need to create and market a product that would make nicotine cool again, without any of the  
2 stigma associated with cigarettes. With help from their early investors and board members, who  
3 include Nicolas Pritzker, Huyoung Huh, and Riaz Valani (together, the “Management Defendants”),  
4 they succeeded in hooking millions of youth, and, of course, earning billions of dollars in profits.

5  
6 4. Every step of the way, JLI, by calculated intention, adopted the cigarette industry’s  
7 playbook, in coordination with one of that industry’s innovators, cigarette giant Altria. JLI was created  
8 in the image of the iconic American cigarette companies, which JLI founders praised for creating “the  
9 most successful consumer product of all time. . . . an amazing product.” The secret to that “amazing  
10 product”? Nicotine, a chemical that has deleterious effects on developing young brains, is the  
11 fundamental reason that people persist in using tobacco products even though they can cause  
12 pulmonary injuries, cardiovascular disease and other serious, often fatal, conditions. Through careful  
13 study of decades of cigarette industry documents, JLI knew that the key to developing and sustaining  
14 addiction was the amount and the efficiency of the nicotine delivery.  
15

16 5. Three tactics were central to decades of cigarette industry market dominance: product  
17 design to maximize addiction; mass deception; and targeting of youth. JLI and its co-conspirators  
18 adopted and mastered them all. *First*, JLI and Bowen designed JUUL products to create and sustain  
19 addiction, not break it. JLI and Bowen were the first to design an e-cigarette that could compete with  
20 combustible cigarettes on the speed and strength of nicotine delivery. Indeed, JUUL products use  
21 nicotine formulas and delivery methods much stronger than combustible cigarettes, confirming that  
22 what JLI and Bowen designed was a starter product designed for youth, not a cessation or cigarette  
23 replacement product. JLI and Bowen also innovated by making an e-cigarette that was smooth and  
24 easy to inhale, practically eliminating the harsh “throat hit,” which otherwise deters nicotine  
25 consumption, especially among nicotine “learners,” as R.J. Reynolds’ chemist Claude Teague called  
26 new addicts, primarily young people.  
27

1           6.       *Second*, JLI and the Management Defendants, just like cigarette companies before them,  
2 targeted kids as their customer base. One of JLI’s “key needs” was the need to “own the ‘cool kid’  
3 equity.” JUUL products were designed to appear slick and high-tech like a cool gadget, including  
4 video-game-like features like “party mode.” JLI offered kid-friendly flavors like mango and cool mint  
5 and partnered with Altria to create and preserve the market for mint-flavored products—all because  
6 Defendants knew that flavors get young people hooked. Under the guise of youth smoking prevention,  
7 JLI sent representatives directly to schools to study teenager e-cigarette preferences.  
8

9           7.       *Third*, JLI, the Management Defendants and Altria engaged in a campaign of deceit,  
10 through sophisticated mass media and social media communications, advertisements and otherwise,  
11 about the purpose and dangers of JUUL products. JUUL products’ packaging and advertising grossly  
12 understates the nicotine content in its products. Advertising campaigns featured JUUL paired with food  
13 and coffee, positioning JUUL as part of a healthy meal, a normal part of a daily routine, and as safe as  
14 caffeine. In partnership with Altria, JLI adopted a “Make the Switch” campaign to mislead the public  
15 into thinking that JLI products were benign smoking cessation devices, even though JUUL was never  
16 designed to break addictions. JLI, the Management Defendants, and Altria also concealed the results of  
17 studies that revealed that JUUL products were far more powerfully addictive than was disclosed. JLI’s  
18 deceptive marketing scheme was carried out across the country through broad distribution channels:  
19 veteran cigarette industry wholesalers, distributors and retailers ensured that JUUL products would  
20 become widely available to a new market of nicotine-newcomers, especially youth. JLI and the  
21 Management Defendants joined with these veteran cigarette industry marketers to secure premium  
22 shelf space for vivid displays at convenience stores, like 7-11, and gas stations, including Chevron, that  
23 would lure e-cigarette users, particularly young people, who would become long-term customers.  
24 These marketing efforts have been resounding successes—when JUUL products were climbing in  
25 sales, most youth—and their parents—believed that e-cigarettes did not contain nicotine at all.  
26  
27  
28

1           8.       JLI and the Management Defendants reached their intended demographic through a  
2 diabolical pairing of notorious cigarette company advertising techniques (long banned for cigarettes  
3 because they cause young people to start smoking) with cutting-edge viral marketing campaigns and  
4 social media. They hired young models and advertised using bright, “fun” themes, including on media  
5 long barred to the cigarette industry, such as billboards, on children’s websites such as “Nick Junior”  
6 and Cartoon Network, and on websites providing games and educational tools to students in middle  
7 school and high school. JLI and the Management Defendants also employed young social media  
8 “influencers” and celebrities popular with teenagers. When the public, regulators, and Congress caught  
9 onto JLI’s relentless focus on children, JLI and the Management Defendants simply lied, even though  
10 they knew well that they had purposefully targeted youth in their marketing and those efforts had been  
11 breathtakingly successful.  
12

13  
14           9.       It should come as little surprise that JLI and the Management Defendants’ misconduct,  
15 expressly patterned after decades of cigarette company practices, could not have been carried out  
16 without the involvement and expertise of an actual cigarette company. In December 2018, Altria paid  
17 \$12.8 billion to acquire a 35% stake in JLI. But even well before Altria announced its investment in  
18 JLI, the connections between the two companies ran deep. JLI and Altria collaborated to grow the  
19 e-cigarette market and the number of users addicted to nicotine, including by sharing data and  
20 information and coordinating marketing activities, including acquisition of key shelf space next to  
21 top-selling Marlboro cigarettes. Altria’s investment in JLI is not merely a financial proposition, but a  
22 key element of Defendants’ plan to stave off regulation and public outcry and keep their most potent  
23 and popular products on the market. JLI has benefitted from Altria’s expertise in designing and  
24 marketing addictive products, and in thwarting regulation.  
25

26           10.       There is no doubt about it—JLI, the Management Defendants, Altria, and their co-  
27 Defendants have created this youth public health crisis. At the heart of this disastrous epidemic are the  
28

1 concerted efforts of JLI, its co-conspirators, and all those in JUUL's supply and distribution chain to  
2 continuously expand their market share and profits by preying upon a vulnerable young population and  
3 deceiving the public about the true nature of the products they were selling. Nicotine is not benign like  
4 coffee, contrary to what many JUUL users believe. Nor is the aerosol as harmless as puffing room air.  
5 Worse, the flavors in JUUL products are themselves toxic and dangerous, and have never been  
6 adequately tested to ensure they are safe for inhalation. According to the most recent scientific  
7 literature, JUUL products cause acute and chronic pulmonary injuries, cardiovascular conditions, and  
8 seizures. Yet JUUL products and advertising contain no health risk warnings at all. And a generation  
9 of kids is now hooked, ensuring long-term survival of the nicotine industry because, today just as in  
10 the 1950s, 90% of smokers start as children.

## 11 12 **II. JURISDICTION AND VENUE**

13  
14 11. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331  
15 because Plaintiff's racketeering claim arises under the laws of the United States, 18 U.S.C. § 1961 *et*  
16 *seq.*, and pursuant to 28 U.S.C. § 1332(a) because: (i) the amount in controversy exceeds \$75,000,  
17 exclusive of interests and costs, and (ii) the plaintiff and defendants are citizens of different states. This  
18 Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

19  
20 12. The Court has personal jurisdiction over Defendants because they do business in the  
21 Western District of Washington and have sufficient minimum contacts with the District. Defendants  
22 intentionally avail themselves of the markets in this State through the promotion, marketing, and sale  
23 of the products at issue in this lawsuit in Washington, and by retaining the profits and proceeds from  
24 these activities, to render the exercise of jurisdiction by this Court permissible under Washington law  
25 and the U.S. Constitution.  
26  
27

13. The Court also has personal jurisdiction over JLI, the Management Defendants, and Altria under 18 U.S.C. § 1965, because at least one of these Defendants has sufficient minimum contacts with the District.

14. Venue is proper in the Western District of Washington pursuant to 28 U.S.C. § 1391 (b)(2) and (3) because a substantial part of the events or omissions giving rise to the claims at issue in this Complaint arose in this District and Defendants are subject to the Court's personal jurisdiction with respect to this action.

### III. PARTIES

#### **Plaintiff**

15. Plaintiff Tulalip Tribes ("Tulalip", "Plaintiff", or "the Tribes") is a sovereign Indian nation, the federally recognized successors in interest to the Snohomish, Snoqualmie, Skykomish, and associated dependent tribes and bands that signed the Treaty of Point Elliott in 1855. The traditional language of the Tulalip Tribes is Lushootseed. The citizenship of the Tribes presently consists of approximately 5,113 enrolled tribal members, with approximately 2,700 members residing on the 22,000-acre Tulalip Indian Reservation.

16. The governing body of the Tulalip Tribes is the Tulalip Board of Directors. Members of the Board of Directors are elected by enrolled members of the Tulalip Tribes. The tribal government is located in Tulalip, Washington. The Board of Directors exercises the Tribes' inherent sovereign authority over the Tribes' Reservation and citizens, pursuant to the Constitution and Bylaws approved by the United States Commissioner of Indian Affairs and the Secretary of the Interior on January 24, 1936, pursuant to the Act of June 18, 1934 (48 Stat. 984, 25 U.S.C. §476).

17. The Tribes provides services including a court system, law enforcement, family and senior housing, education, a child welfare system, infrastructure improvements, and a drug-treatment program. The Tulalip Tribes also offers an integrated health system that includes medical, dental,

1 optometry, pharmacy, and complementary services such as acupuncture, reiki, and massage.

2 Regardless of their location, many members of the Tulalip Tribes rely on the Tribes for services.

3 Approximately 977 employees work for the government of the Tulalip Tribes.

4  
5 18. As a sovereign Indian nation, the Tulalip Tribes possess inherent authority over its  
6 members and territory. In accordance with the Constitution and Bylaws for the Tulalip Tribes of  
7 Washington, the Board of Directors has the power to safeguard and promote the peace, safety, morals,  
8 and general welfare of the Reservation by regulating the conduct of trade, and the authority to provide  
9 for the maintenance of law and order and the administration of justice.

10 **JUUL Labs, Inc.**

11 19. Defendant JUUL Labs, Inc. (“JLI”) is a Delaware corporation, having its principal place  
12 of business in San Francisco, California. Ploom, Inc., a predecessor company to JLI, was incorporated  
13 in Delaware on March 12, 2007. In 2015, Ploom, Inc. changed its name to PAX Labs, Inc. In April  
14 2017, PAX Labs, Inc. changed its name to JUUL Labs, Inc., and formed a new subsidiary corporation  
15 with its old name, PAX Labs, Inc. That new subsidiary, PAX Labs, Inc. (“PAX”), was incorporated in  
16 Delaware on April 21, 2017 and has its principal place of business in San Francisco, California.

17  
18 20. JLI designs, manufactures, sells, markets, advertises, promotes and distributes JUUL e-  
19 cigarettes devices, JUUL pods and accessories (collectively “JUUL” or “JUUL products”). Prior to the  
20 formation of separate entities PAX Labs, Inc. and JLI in or around April 2017, JUUL designed,  
21 manufactured, sold, marketed, advertised, promoted, and distributed JUUL under the name PAX Labs,  
22 Inc.

23  
24 21. Together with its predecessors, JUUL Labs, Inc is referred to herein as “JLI.”

25 **Altria Defendants**

26 22. Defendant Altria Group, Inc., (“Altria” or “Altria Group” or together with its wholly  
27 owned subsidiaries and their predecessors, “Altria” or together with Defendants Philip Morris USA,

1 Inc., Altria Client Services LLC, and Altria Group Distribution Company, the “Altria Defendants”) is a  
 2 Virginia corporation, having its principal place of business in Richmond, Virginia. Altria is one of the  
 3 world’s largest producers and marketers of tobacco products, manufacturing and selling combustible  
 4 cigarettes for more than a century.

5 23. Defendant Philip Morris USA, Inc. (“Philip Morris”), is a wholly-owned subsidiary of  
 6 Altria. Philip Morris is also a Virginia corporation that has its principal place of business in Richmond,  
 7 Virginia. Philip Morris is engaged in the manufacture and sale of cigarettes in the United States. Philip  
 8 Morris is the largest cigarette company in the United States. Marlboro, the principal cigarette brand of  
 9 Philip Morris, has been the largest selling cigarette brand in the United States for over 40 years.

10 24. On December 20, 2018, Altria Group and Altria Enterprises LLC purchased a 35%  
 11 stake in JLI. Altria and JLI executed a Services Agreement that provides that Altria, through its  
 12 subsidiaries, Philip Morris, Altria Client Services LLC, and Altria Group Distribution Company,  
 13 would assist JLI in the selling, marketing, promoting, and distributing of JUUL, among other things.

14 25. Defendant Altria Client Services LLC (“Altria Client Services” or “ACS”) is a Virginia  
 15 limited liability company with its principal place of business in Richmond, Virginia. Altria Client  
 16 Services provides Altria Group, Inc. and its companies with services in many areas including digital  
 17 marketing, packaging design & innovation, product development, and safety, health, and  
 18 environmental affairs. Pursuant to Altria’s Relationship Agreement with JLI, Altria Client Services  
 19 assists JLI in the sale, marketing, promotion and distribution of JUUL products.<sup>1</sup> Such services include  
 20 database support, direct marketing support, and premarket product application support.<sup>2</sup> On September  
 21  
 22  
 23  
 24  
 25

26 <sup>1</sup> Altria Group, Inc., *Relationship Agreement by and among JUUL Labs, Inc., Altria Group, Inc., and*  
 27 *Altria Enterprises LLC* (“Relationship Agreement”) (Form 8-K), Ex. 2.2 (Dec. 20, 2018),  
<https://www.sec.gov/Archives/edgar/data/764180/000119312518353970/d660871dex22.htm>.

28 <sup>2</sup> *Id.*

25, 2019, the former senior vice president and chief growth officer of Altria Client Services, K.C. Crosthwaite, became the new chief executive officer of JLI.

26. Defendant Altria Group Distribution Company (“AGDC”) is a Virginia corporation and wholly owned subsidiary of Altria Group, Inc. with its principal place of business in Richmond, Virginia. Altria Group Distribution Company provides sales, distribution and consumer engagement services to Altria’s tobacco companies. Altria Group Distribution Company performs services under the Relationship Agreement to assist JLI in the sale, marketing, promotion and distribution of JLI. Such services include JUUL-distribution support, the removal by Altria Group Distribution Company of Nu Mark products (such as Green Smoke or MarkTen) and fixtures in retail stores and replacing them with JUUL products and fixtures, and sales support services.

27. While Plaintiff has attempted to identify the specific Altria defendant which undertook certain acts alleged in this Complaint, they were not always able to do so due to ambiguities in Altria’s and JLI’s own documents. References in these internal documents to “Altria” without further detail are common. In other words, Defendants do not always specify which entity is involved in particular activities in their own internal documentation. Moreover, key employees moved freely between Altria Group, Inc. and its various operating subsidiaries, including defendants Altria Client Services, Altria Group Distribution Company, and Philip Morris USA Inc – each of which is a wholly owned subsidiary of Altria Group, Inc. For example, K.C. Crosthwaite (who would later become CEO of JLI) was at various points from 2017 through 2019 employed by Altria Client Services, Philip Morris, and Altria Group. And in its own annual reports to Shareholders, when identifying the “Executive Officers” of Altria Group, Altria states that the “officers have been employed by Altria *or its subsidiaries* in various capacities during the past five years.”<sup>3</sup>

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<sup>3</sup> Altria Group, Inc., *2018 Altria Group, Inc. Annual Report* at 98, available at <http://investor.altria.com/file/4087349/Index?KeyFile=1001250956> (emphasis added)



28. Notably, Altria Group directs the activities of its varying operating companies, including defendants Altria Client Services, AGDC, and Philip Morris. For this reason, and unless otherwise specified, the term “Altria” refers to Altria Group Inc. as the responsible entity, by virtue of its control over its various operating subsidiaries. To the extent such an assumption is incorrect, the knowledge of which Altria Group Inc. subsidiary is responsible for specific conduct is knowledge solely within the possession of the Altria Defendants.

### **Management Defendants**

29. Defendant James Monsees is a resident of the San Francisco Bay area, California. In 2007, he co-founded Ploom with Adam Bowen. He served as Chief Executive Officer of JLI until October 2015. Since October 2015, he has been Chief Product Officer of JLI. At all relevant times, he has been a member of the Board of Directors of JLI until he stepped down in March 2020.

30. Defendant Adam Bowen is a resident of the San Francisco Bay area, California. In 2007, he co-founded Ploom with Defendant Monsees. At all relevant times, he has been Chief Technology Officer and a member of the Board of Directors of JLI.

31. Defendant Nicholas Pritzker is a resident of San Francisco, California, and a member of the Pritzker family, which owned the chewing-tobacco giant Conwood before selling it to Reynolds American, Inc., a subsidiary of British American Tobacco. Pritzker received a J.D. from the University of Chicago. He served as president of the Hyatt Hotels Corporation and was a member of its Board of Directors from 1980 to 2007. More recently, he co-founded Tao Capital, an early investor in, among other companies, Tesla Motors and Uber. In 2011, he invested in JLI.<sup>4</sup> He has been on the Board of Directors of JLI since at least August 2013.<sup>5</sup> At least from October 2015 to August 2016, he was on the

<sup>4</sup> Ainsley Harris, *How JUUL went from a Stanford thesis to \$16 billion startup*, Fast Co. (Mar. 8, 2020), <https://www.fastcompany.com/90263212/how-JUUL-went-from-a-stanford-thesis-to-16-billion-startup>.

<sup>5</sup> JLI01426164.

Executive Committee in the Board of Directors and served as Co-Chairman. He controlled two of JLI's seven maximum Board seats (the second of which was occupied at relevant times by Alexander Asseily and Zachary Frankel).<sup>6</sup>

32. Defendant Hoyoung Huh currently lives in Florida. During most of the relevant time period, he lived and worked in the Silicon Valley area, California. He holds an M.D. from Cornell and a Ph.D. in Genetics/Cell Biology from Cornell/Sloan-Kettering. He has been CEO or a Board member of numerous biotechnology businesses, including Geron Corporation. Huh has been on the Board of Directors of JLI since at least June 2015. At least from October 2015 to August 2016, he was on the Executive Committee in the Board of Directors. Huh occupied the Board seat appointed by a majority of the JLI Board.<sup>7</sup> Huh resigned from JLI's board in May 2018.<sup>8</sup>

33. Defendant Riaz Valani lives near San Jose, California and is a general partner at Global Asset Capital, a San Francisco-based private equity investment firm. He first invested in JLI in 2007, and has been on the Board of Directors of JLI since at least 2007.<sup>9</sup> At least from October 2015 to August 2016, he was on the Executive Committee in the Board of Directors. He controlled two JLI's maximum seven Board seats.<sup>10</sup> Beginning around March 2015, Valani's second seat was occupied by Hank Handelsman; Zach Frankel may have occupied Valani's second seat starting in 2017, though Handelsman remained on the board.<sup>11</sup>

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<sup>6</sup> JLI01356230; JLI01356237; JLI00417815 (same in February 2018); JLI01362388; JLI01439393; JLI01440776.

<sup>7</sup> *Id.*

<sup>8</sup> JLI01425022.

<sup>9</sup> JLI01437838; Ploom, Inc., Notice of Exempt Offering of Securities (Form D) (May 5, 2011), [https://www.sec.gov/Archives/edgar/data/1520049/000152004911000001/xslFormDX01/primary\\_doc.xml](https://www.sec.gov/Archives/edgar/data/1520049/000152004911000001/xslFormDX01/primary_doc.xml).

<sup>10</sup> JLI01426710; JLI01365707; INREJUUL\_00327603; JLI00417815.

<sup>11</sup> JLI01356230; JLI01356237; JLI00417815; JLI01365706; JLI01362388; JLI01439393; JLI01440776.

34. Defendants Monsees, Bowen, Pritzker, Huh, and Valani are referred to collectively as the “Management Defendants.”

35. The Altria Defendants, Monsees, Bowen, Pritzker, Huh, and Valani are referred to collectively as the “RICO Defendants.”

#### IV. GENERAL FACTUAL ALLEGATIONS

##### A. Each Defendant Was Instrumental in Seeking to Develop and Market the Blockbuster Sequel to Combustible Cigarettes, the “Most Successful Consumer Product of All Time.”

36. JLI’s co-founder James Monsees has described the cigarette as “the most successful consumer product of all time . . . an amazing product.”<sup>12</sup> This statement, which ignores the fact that cigarettes have caused more deaths than any other human invention, contained a kernel of truth. When U.S. smoking rates peaked in the mid-1960s, 42% of adults smoked cigarettes. Cigarettes were everywhere; people smoked on airplanes, in movie theatres, at the office, and at sports games. Movie stars and sports heroes smoked. Cigarette advertising wallpapered American life, glamorizing smoking as sophisticated, cool, and the thing to do.

37. But in reality, of course, this “successful” product has long been the world’s leading cause of preventable death.

38. Years of anti-smoking campaigns, including work by local government public health departments and school-based anti-tobacco programs, have made great strides towards denormalizing cigarette smoking. But where public health officials and schools saw progress, others saw an opportunity.

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<sup>12</sup> Kathleen Chaykowski, Billionaires-to-be: Cigarette Breakers–James Monsees and Adam Bowen Have Cornered the US E-Cigarette Market with Juul. Up Next: The World, FORBES INDIA (Sept. 27, 2018), [www.forbesindia.com/article/leaderboard/billionairestobe-cigarette-breakers/51425/1](http://www.forbesindia.com/article/leaderboard/billionairestobe-cigarette-breakers/51425/1).

39. Citing “some problems” inherent in the cigarette, Monsees and JLI co-founder Adam Bowen set out to “deliver[] solutions that refresh the magic and luxury of the tobacco category.”<sup>13</sup> Monsees saw “a huge opportunity for products that speak directly to those consumers who aren’t perfectly aligned with traditional tobacco products.”<sup>14</sup> Successfully capitalizing on this opportunity would mean not only billions of dollars in short-term revenue but lucrative acquisition by a cigarette industry power player.

40. Bowen and Monsees took the first major step toward realizing their vision by deliberately creating an extremely potent nicotine product that looked nothing like a cigarette. But achieving widespread adoption of their highly addictive product required resources and expertise beyond those possessed by Bowen, Monsees or others at JLI.

41. When it became clear that Bowen and Monsees could not achieve vision of growing the number of nicotine-addicted e-cigarette users to ensure a base of customers for life through JLI by themselves, the Management Defendants planned a fundamental shift in roles to allow Pritzker, Huh, and Valani to direct and take control of JLI and use it to commit the Defendants’ unlawful acts.

42. Specifically, in October 2015, Monsees stepped down from his role as Chief Executive Officer of JLI (to become Chief Product Officer) and, in his stead, Pritzker, Valani, and Huh formed an Executive Committee of the JLI Board of Directors that would take charge of fraudulently marketing JUUL products, including to youth.

43. Prior to the installation of Tyler Goldman as JLI’s new CEO in August 2016, Defendants Pritzker, Valani, and Huh used their newly formed Executive Committee to expand the number of addicted e-cigarette users through fraudulent advertising and representations to the public.

<sup>13</sup> Josh Mings, *Ploom Model Two Slays Smoking With Slick Design and Heated Tobacco Pods*, SOLID SMACK (Apr. 23, 2014), [www.solidsmack.com/design/ploom-modeltwo-slick-design-tobacco-pods](http://www.solidsmack.com/design/ploom-modeltwo-slick-design-tobacco-pods).

<sup>14</sup> *Id.*

1 They overrode other board members' arguments that JLI's youth oriented marketing campaign should  
 2 be abandoned or scaled back, directed the continuation of the marketing campaign that they knew was  
 3 actively targeting youth, and cleaned house at JLI by "dismiss[ing] other senior leaders and effectively  
 4 tak[ing] over the company."<sup>15</sup> Once their leadership was secure, defendants Pritzker, Valani, and Huh  
 5 pressed for even "more aggressive rollout and [marketing]."<sup>16</sup>

7 44. Defendants Bowen, Monsees, Pritzker, Valani, and Huh thus, and as further set forth in  
 8 this complaint, controlled JLI and used it to make fraudulent misrepresentations or omissions regarding  
 9 Juul's intentional addictiveness and method of nicotine delivery, combined with the intent, contrary to  
 10 public statements, to grow the market for nicotine-addicted individuals for their own financial gain.

11 45. And, as set forth in this complaint, Defendants Bowen, Monsees, Pritzker, Huh, and  
 12 Valani sought to personally profit from their unlawful acts, using their control of JLI to position the  
 13 company for acquisition. By no later than August 2015, and likely earlier, Defendant Monsees was in  
 14 talks with Japan Tobacco International (an early investor in Ploom, JLI's predecessor), British  
 15 American Tobacco, and Phillip Morris International regarding a potential acquisition of the JUUL  
 16 business. Monsees had already received "a couple good faith lowball offers" from British American  
 17 Tobacco and was awaiting a proposal from PMI that month. At the same time, Monsees was looking  
 18 for "banking support to give an internal tobacco champion the tools to argue for a sizeable deal."<sup>17</sup>

20 46. By no later than August 2015, Defendants Bowen, Pritzker, Valani, and Huh joined in  
 21 the discussions of a potential acquisition by a major cigarette company,<sup>18</sup> as they knew, in the words of  
 22 Defendant Bowen, "big tobacco is used to paying high multiples for brands and market share."  
 23

25 <sup>15</sup> Julie Creswell & Sheila Kaplan, *How Juul Hooked a Generation on Nicotine*, N.Y. TIMES (Nov. 23,  
 26 2019), <https://www.nytimes.com/2019/11/23/health/juul-vaping-crisis.html>.

27 <sup>16</sup> INREJUUL\_00278359.

<sup>17</sup> JLI01369437

<sup>18</sup> INREJUUL\_00016386 (Stifel Presentation, Aug. 2015).

1           47.     Unable to secure an early acquisition, the Management Defendants knew that their  
 2     desire to monetize a massive new market for JUUL would be aided if they could convert Altria, a  
 3     competitor through its e-cigarette subsidiary Nu Mark LLC and an experienced cigarette company with  
 4     a history of marketing to youth and covering it up, into an ally and eventual purchaser. They began that  
 5     effort as late as the Spring of 2017. While Defendants JLI, Bowen, Monsees, Valani, and Huh are  
 6     relative newcomers to the tobacco industry, Altria has been manufacturing and selling “combustible”  
 7     cigarettes for more than a century.

9           48.     Altria, for its part, desperately sought a replenishing customer base. Cigarette  
 10    companies have long known that profitable growth requires a pipeline of “replacement” customers.  
 11    After decades of tobacco litigation and regulation, Altria (including through its subsidiary Philip  
 12    Morris) had little ability to recruit new smokers in the ways that had driven Philip Morris’s success  
 13    through most of the 1900s. In 2017, Altria’s combustible cigarette products (sold through Philip  
 14    Morris) were facing increasing regulatory pressures. In late July 2017, Altria’s stock value plummeted  
 15    shortly after the FDA announced that it would reduce the amount of nicotine allowed in cigarettes with  
 16    an eye toward reaching non-addictive levels.<sup>19</sup> In late 2017, Altria, and other major cigarette  
 17    companies, also finally complied with a consent decree from the 1990s tobacco litigation that required  
 18    them to issue corrective advertising statements that highlighted the addictiveness and health impacts of  
 19    smoking cigarettes.<sup>20</sup>

21           49.     Due in large part to this litigation and regulation, cigarette use has been declining in the  
 22    United States in the last decade, especially among youth.<sup>21</sup> Altria estimates that the cigarette industry

24           

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 25    <sup>19</sup> See Dan Caplinger, *Altria Group in 2017: The Year in Review*, The Motley Fool (Dec. 18, 2017),  
 26    <https://www.fool.com/investing/2017/12/18/altria-group-in-2017-the-year-in-review.aspx>.

27    <sup>20</sup> <https://www.law360.com/articles/1037281/tobacco-cos-settle-long-running-health-warning-dispute>

28    <sup>21</sup> *Current Cigarette Smoking Among Adults In the United States*, CDC,  
[https://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/adult\\_data/cig\\_smoking/index.htm](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/adult_data/cig_smoking/index.htm) (last  
 visited February 10, 2020); *Youth and Tobacco Use*, CDC,

declined by 4% in 2017 and by 4.5% in 2018, and it predicted a continued 4% to 5% decline in the average annual U.S. cigarette industry volume for 2019 through 2023.<sup>22</sup> Altria later adjusted the estimated rate of decline to 4% to 6%, to reflect efforts to increase the legal age for cigarette smoking to 21.<sup>23</sup>

50. In the face of this continued downward trend in the traditional cigarette market, Altria had undertaken its own efforts at marketing an e-cigarette product through its subsidiary Nu Mark LLC. Altria, through Nu Mark, had launched the MarkTen product nationwide in 2014 with an aggressive marketing campaign, eclipsing the advertising expenditures for the market leader at that time, blu e-cigarettes.<sup>24</sup> Of the \$88.1 million spent on e-cigarette advertising in 2014, nearly 40% of that was Altria's MarkTen campaign, at \$35 million.<sup>25</sup> Altria was clear in its intent to dominate the e-cigarette market as it has the combustible cigarette market: "We are the market leader today and we will continue to be," then-CEO Marty Barrington told investors at the time of MarkTen's launch.<sup>26</sup> The original MarkTen was a "cigalike," designed to mimic the look and feel of a combustible cigarette.

51. Altria had also been acquiring small companies in the e-cigarette industry, starting in 2014 with Green Smoke, Inc., whose e-cigarettes were also the "cigalike" style, and were sold in

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[https://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/youth\\_data/tobacco\\_use/index.htm](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/youth_data/tobacco_use/index.htm) (last visited February 10, 2020).

<sup>22</sup> *Altria's Fourth-Quarter 2018 Earnings Conference Call*, Altria (Jan. 31, 2019), <http://investor.altria.com/Cache/1001247877.PDF?O=PDF&T=&Y=&D=&FID=1001247877&iid=4087349>.

<sup>23</sup> *Altria Shares Slide As Cigarette Sales Continue to Decline*, Tobacco Bus. (July 31, 2019), <https://tobaccobusiness.com/altria-shares-slide-as-cigarette-sales-continue-to-decline/>.

<sup>24</sup> Jennifer Cantrell et al., *Rapid increase in e-cigarette advertising spending as Altria's MarkTen enters the marketplace*, Tobacco Control 25 (10) (2015), <http://dx.doi.org/10.1136/tobaccocontrol-2015-052532>.

<sup>25</sup> *Id.*

<sup>26</sup> Melissa Kress, *MarkTen National Rollout Hits 60,000 Stores*, Convenience Store News (July 22, 2014), [https://csnews.com/markten-national-rollout-hits-60000-stores\\_](https://csnews.com/markten-national-rollout-hits-60000-stores_).



1 flavors including “Vanilla Dreams” and “Smooth Chocolate.”<sup>27</sup> In 2016, Altria acquired an e-cigarette  
 2 product called Cync, from Vape Forward.<sup>28</sup> Cync is a small e-cigarette device that uses prefilled pods  
 3 in a variety of flavors, similar to the JUUL.

4 52. At the same time Altria was struggling to market a successful e-cigarette product  
 5 through Nu Mark, it was carefully studying JUUL. A May 13, 2016 presentation by Altria Client  
 6 Services titled “JUUL Market Summary” included detailed information on the sale of JUUL, including  
 7 market share, the number of chain stores selling JUUL, the price of JUUL and JUUL pods, updates to  
 8 the design of JUUL and JUUL pods, new flavor names, the purported nicotine strength of JUUL pods,  
 9 the “Target consumer” for JUUL, and the “Business Model/Sources of Funding” of JLI (then  
 10 PaxLabs).<sup>29</sup>

11 53. In February 2017, Altria told investors at the 2017 Consumer Analyst Group of New  
 12 York (CAGNY) Conference that over the past year, “Nu Mark LLC (Nu Mark) made excellent  
 13 progress toward its long-term aspiration of becoming a leader in e-vapor.”<sup>30</sup> In his remarks, Altria  
 14 Group’s current then-CEO, Howard A. Willard III, said, “Nu Mark, our e-vapor company, had a very  
 15 strong year. It made excellent progress toward establishing MarkTen as a leading brand in the  
 16 category, continued to improve its supply chain, and took the necessary steps to comply with the  
 17  
 18  
 19

20  
 21 <sup>27</sup> Mike Esterl, *Altria To Launch MarkTen E-Cigarette Nationally*, Wall St. J. (Feb. 19, 2014),  
 22 <https://www.wsj.com/articles/altria-to-launch-markten-e-cigarette-nationally-1392832378>; Senator  
 23 Richard J. Durbin et al., *Gateway to Addiction? A Survey of Popular Electronic Cigarette*  
 24 *Manufacturers and Targeted Marketing to Youth* at 12 (Apr. 14, 2014),  
 25 <https://www.durbin.senate.gov/imo/media/doc/Report%20-%20E-Cigarettes%20with%20Cover.pdf>.

26 <sup>28</sup> Remarks by Jody Begley, 2017 Altria Investor Day (Nov. 2, 2017), [http://media.corporate-](http://media.corporate-ir.net/media_files/IROL/80/80855/2017InvestorDay/Remarks_and_Reconciliations.pdf)  
 27 [ir.net/media\\_files/IROL/80/80855/2017InvestorDay/Remarks\\_and\\_Reconciliations.pdf](http://media.corporate-ir.net/media_files/IROL/80/80855/2017InvestorDay/Remarks_and_Reconciliations.pdf).

28 <sup>29</sup> ALGAT0002577924.

<sup>30</sup> Remarks by Marty Barrington, Altria Group, Inc.’s (Altria) Chairman, CEO and President, and other  
 members of Altria’s senior management team 2017 Consumer Analyst Group of New York  
 (CAGNY), (2017), [http://investor.altria.com/Cache/IRCache/1ac8e46a-7eb4-5df2-843d-](http://investor.altria.com/Cache/IRCache/1ac8e46a-7eb4-5df2-843d-06673f29b6b0.PDF?O=PDF&T=&Y=&D=&FID=1ac8e46a-7eb4-5df2-843d-06673f29b6b0&iid=4087349)  
 06673f29b6b0.PDF?O=PDF&T=&Y=&D=&FID=1ac8e46a-7eb4-5df2-843d-  
 06673f29b6b0&iid=4087349.



1 deeming regulations.” He noted, however, that the estimated “total 2016 e-vapor consumer spending  
 2 was roughly flat compared to the prior year at approximately \$2.5 billion.”<sup>31</sup> In 2017, Altria’s  
 3 MarkTen e-cigarettes had a market share of only 13.7%, well behind JLI’s growing market share of  
 4 40%.<sup>32</sup> Thus, despite its public statements to the contrary, Altria knew the popularity of JUUL stood in  
 5 the way of Altria becoming the dominant force in the e-cigarette market.  
 6

7 54. With smoking on the decline, litigation and regulatory controls were ramping up and  
 8 threatening Altria’s ability to attract new smokers, and JUUL outperforming Altria’s products in the  
 9 market, Altria saw a solution in JLI, with its exponential growth and large youth market. That youth  
 10 market would be key to replacing Altria’s lost profits for years to come. So, Altria Group and Altria  
 11 Client Services set out to court the leaders of JLI in an eighteen-month dance, all the while signaling  
 12 that a massive payout would await those leaders if they maintained JLI’s large youth market.  
 13

14 55. Essential to maintaining JLI’s large youth market, of course, was delaying or preventing  
 15 regulation or public outcry that could interfere with Altria’s and the Management Defendants’ efforts.  
 16 Altria, with its decades of experience doing just that, aided JLI and the Management Defendants in  
 17 these efforts along the way, ultimately attempting to deceive the public and the FDA itself in order to  
 18 defraud users when the specter of regulation threatened the value of its impending investment in late  
 19 2018. Altria’s best bet for maintaining its sales by increasing the number of users, especially youth,  
 20 addicted to nicotine was to partner with JLI’s leadership (1) to maintain or increase the number of  
 21 users, especially youth, hooked on JUUL; and (2) to delay and prevent regulation that could interfere  
 22 with this first scheme.  
 23  
 24  
 25

26 <sup>31</sup> *Id.*

27 <sup>32</sup> Richard Craver, *Vuse falls further behind Juul on e-cig sales*, Winston-Salem Journal (Dec. 14,  
 28 2017), [https://www.journalnow.com/business/vuse-falls-further-behind-juul-on-e-cig-sales/article\\_ed14c6bc-5421-5806-9d32-bba0e8f86571.html](https://www.journalnow.com/business/vuse-falls-further-behind-juul-on-e-cig-sales/article_ed14c6bc-5421-5806-9d32-bba0e8f86571.html).

56. For those reasons and others, Altria began coordinating with the Management Defendants in the Spring of 2017. And so, with Defendants Bowen, Monsees, Pritzker, Valani, and Huh looking for a big payout, and Altria and Altria Client Services looking for new customers, this group of Defendants began to work together, using JLI to further their unlawful ends, in the Spring of 2017. Of course, these Defendants were not strangers to one another. Before the Spring of 2017, Altria (through Altria Client Services) and JLI were members of at least one industry group that shared information and coordinated public statements regarding vaping,<sup>33</sup> and Ploom’s advisory committee included Altria’s former growth officer. Howard Willard, Altria’s CEO said, the company followed “JUUL’s journey rather closely” from its early beginnings.<sup>34</sup>

57. As discussed further below, Altria first contacted JLI’s leadership, including Defendants Pritzker and Valani, about a partnership by early 2017, with “confidential discussions” beginning in the Spring of 2017.<sup>35</sup> JLI’s pitch deck to investors at the time boasted that “Viral Marketing Wins,” and that JUUL’s super potent nicotine formulation was “cornering” the consumables market with the highest customer retention rate of any e-cigarette.<sup>36</sup>

58. By the Fall of 2017, JLI, through its leadership including the Management Defendants, and Altria had agreed to and had taken coordinated actions to maintain and expand JUUL’s market share, knowing that it was based on sales to youth and fraudulent and misleading advertising to users of all ages.

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<sup>33</sup> INREJUUL\_00278740.

<sup>34</sup> Olivia Zaleski & Ellen Huet, *Juul Expects Skyrocketing Sales of \$3.4 Billion, Despite Flavored Vape Restrictions*, Bloomberg (Feb. 22, 2019), <https://www.bloomberg.com/news/articles/2019-02-22/juul-expects-skyrocketing-sales-of-3-4-billion-despite-flavored-vape-ban>.

<sup>35</sup> Altria’s October 14, 2019 letter to Senator Durbin, et. al., by Howard Willard III (2019).

<sup>36</sup> INREJUUL\_00349529.

1           59. The “confidential discussions” continued, with Altria’s leadership meeting regularly  
2 with Pritzker and Valani for “a period of approximately 18 months.”<sup>37</sup> Defendants Pritzker and Valani  
3 took the lead on these discussions (together with JLI CEO Kevin Burns), working to establish the  
4 formal JLI-Altria partnership. On August 1, 2018, Pritzker, Valani, and JLI’s CEO Kevin Burns met  
5 Willard and William Gifford, Altria’s CFO, at the Park Hyatt Hotel in Washington, D.C., to discuss  
6 their partnership and Altria’s support of JUUL’s mission.  
7

8           60. During the roughly 18-month negotiating period, Pritzker, Valani, and JLI’s leadership  
9 communicated regularly with Altria as they all worked together to fraudulently growth and maintain  
10 JUUL’s market share. Through their control of JLI, Bowen, Monsees and Huh remained critical to the  
11 success of these efforts. Without their control of the JLI Board of Directors and prior fraudulent  
12 conduct, the close coordination between JLI’s leadership and Altria and Altria’s investment in JLI to  
13 support JUUL’s mission, would not have been possible.  
14

15           61. In December 2018, Altria decided to take the next step in its coordination with the  
16 Management Defendants and JLI’s leadership by making a \$12.8 billion equity investment in JLI, the  
17 largest equity investment in United States history. This arrangement was profitable for Altria, as well  
18 as enormously lucrative for Defendants Monsees, Bowen, Pritzker, Valani, and Huh, as detailed below.  
19

20           62. Both before and after Altria’s investment, JLI, through its employees and officers,  
21 provided Altria with critical information regarding the design and nicotine content of the JUUL  
22 product, the labeling of the JUUL product, and related topics including advertising, retail distribution,  
23 online sales, age verification procedures, information on underage user’s flavor preferences, and  
24 regulatory strategies. Altria, for its part, increasingly guided and directed JLI and the Management  
25  
26

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27 <sup>37</sup> *Id.*

1 Defendants in these areas and helped them devise and execute schemes to preserve JLI's youth appeal  
2 and market, including by deceiving users of all ages and regulators.

3 63. JLI, the Management Defendants, and Altria worked together to implement their shared  
4 goal of growing a youth market in the image of the combustible cigarette market through a multi-  
5 pronged strategy to: (1) create an highly addictive product that users would not associate with  
6 cigarettes and that would appeal to the lucrative youth market, (2) deceive the public into thinking the  
7 product was a fun and safe alternative to cigarettes that would also help smokers quit, (3) actively  
8 attract young users through targeted marketing, and (4) use a variety of tools, including false and  
9 deceptive statements to the public and regulators, to delay regulation of e-cigarettes. As detailed more  
10 fully throughout this Complaint, each of the Defendants played a critical role—at times overlapping  
11 and varying over time—in each of these strategies.  
12

13  
14 **B. Defendants' Strategy Was to Create a Nicotine Product That Would Maximize Profits  
Through Addiction.**

15 **1. Defendants Understood that the "Magic" Behind Cigarettes' Stratospheric  
16 Commercial Success Was Nicotine Addiction.**

17 64. The first step in replicating the success of combustible cigarettes was to create a product  
18 that, like combustible cigarettes, was based on getting users addicted to the nicotine in the product.  
19 Nicotine is an alkaloid, a class of plant-derived nitrogenous compounds that is highly addictive and the  
20 key ingredient that drives addiction to cigarettes. Nicotine's addictive properties are similar to heroin  
21 and cocaine.<sup>38</sup>  
22

23 65. Route of administration and speed of delivery are key to understanding nicotine's  
24 addictive potential. Dr. Neal Benowitz, Scientific Editor of the 1988 Surgeon General's Report on  
25 nicotine addiction, wrote: "After a puff, high levels of nicotine reach the brain in 10–20 s[econds],  
26

27 <sup>38</sup> See e.g., U.S. Dep't of Health and Human Servs., *Nicotine Addiction: A Report of the Surgeon  
28 General*, DHHS Publication Number (CDC) 88-8406, (1988).

1 faster than with intravenous administration, producing rapid behavioral reinforcement. The rapidity of  
2 rise in nicotine levels permits the smoker to titrate the level of nicotine and related effects during  
3 smoking, and makes smoking the most reinforcing and dependence-producing form of nicotine  
4 administration.”<sup>39</sup>

5  
6 66. Again, according to Dr. Benowitz, “The rapid rate of delivery of nicotine by smoking  
7 ... results in high levels of nicotine in the central nervous system with little time for development of  
8 tolerance. The result is a more intense pharmacologic action. The short time interval between puffing  
9 and nicotine entering the brain also allows the smoker to titrate the dose of nicotine to a desired  
10 pharmacologic effect [often subconsciously], further reinforcing drug self-administration and  
11 facilitating the development of addiction.”<sup>40</sup>

12  
13 67. Nicotine fosters addiction through the brain’s “reward” pathway. Both a stimulant and a  
14 relaxant, nicotine affects the central nervous system; increases blood pressure, pulse, and metabolic  
15 rate; constricts blood vessels of the heart and skin; and causes muscle relaxation. Long-term exposure  
16 to nicotine causes upregulation—an increase in the number of these high-affinity nicotinic receptors in  
17 the brain. When nicotine binds to these receptors it triggers a series of physiological effects in the user  
18 that are perceived as a “buzz” that includes pleasure, happiness, arousal, and relaxation of stress and  
19 anxiety. With regular nicotine use, however, these feelings diminish, and the user must consume  
20 increasing amounts of nicotine to achieve the same effects.  
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27 <sup>39</sup> Neal L. Benowitz et al., *Nicotine Chemistry, Metabolism, Kinetics and Biomarkers*, 192 HANDB.  
EXP. PHARMACOL. 29 (2010), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2953858/>

28 <sup>40</sup> *Id.*

1           68. Kids are particularly vulnerable to nicotine addiction, as Defendants know well. As  
 2 described by the United States Surgeon General, “Tobacco use is a pediatric epidemic.” Nine out of ten  
 3 smokers begin by age 18 and 80% who begin as teens will smoke into adulthood.<sup>41</sup>

4           69. The above statements apply equally, if not more so, to e-cigarettes. Further, the Surgeon  
 5 General has explained how the nicotine in e-cigarettes affects the developing brain and can addict kids  
 6 more easily than adults: “Until about age 25, the brain is still growing. Each time a new memory is  
 7 created, or a new skill is learned, stronger connections—or synapses—are built between brain cells.  
 8 Young people’s brains build synapses faster than adult brains. Because addiction is a form of learning,  
 9 adolescents can get addicted more easily than adults.”<sup>42</sup> The effects of nicotine exposure on the brain  
 10 of youth and young adults include not only addiction, priming for use of other addictive substances,  
 11 but also reduced impulse control, deficits in attention and cognition, and mood disorders.<sup>43</sup> A highly  
 12 addictive, psychoactive substance that targets brain areas involved in emotional and cognitive  
 13 processing, nicotine poses a particularly potent threat to the adolescent brain, as it can “derange the  
 14 normal course of brain maturation and have lasting consequences for cognitive ability, mental health,  
 15 and even personality.”<sup>44</sup>

16           70. In 2014, the United States Surgeon General reported that nicotine addiction is the  
 17 “fundamental reason” that individuals persist in using tobacco products, and this persistent tobacco use  
 18

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 21  
 22 <sup>41</sup> *Preventing Tobacco Use Among Youth and Adults, A Report of the Surgeon General* at 1 (2012),  
<https://www.hhs.gov/surgeongeneral/reports-and-publications/tobacco/index.html>.

23 <sup>42</sup> *Know The Risks: E-Cigarettes & Young People* (2019), <https://e-cigarettes.surgeongeneral.gov/knowtherisks.html>.

24 <sup>43</sup> Menglu Yuan et al., *Nicotine and the Adolescent Brain*, 593 J. OF PHYSIOLOGY 3397 (2015),  
 25 [www.ncbi.nlm.nih.gov/pmc/articles/PMC4560573/](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4560573/); U.S. Surgeon General and U.S. Centers for  
 26 Disease Control & Prevention, Office on Smoking and Health, *Know the Risks: E-Cigarettes and*  
*Young People* (2019), <https://e-cigarettes.surgeongeneral.gov/>.

27 <sup>44</sup> Natalia A. Goriounova & Huibert D. Mansvelder, *Short- and Long-Term Consequences of Nicotine*  
*Exposure During Adolescence for Prefrontal Cortex Neuronal Network Function*, 2 COLD SPRING  
 28 HARBOR PERSP. MED. 12 (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3543069/>.

1 contributes to millions of needless deaths and many diseases, including diseases that affect the heart  
 2 and blood vessels (cardiovascular disease), lung diseases (chronic obstructive pulmonary disease  
 3 (COPD) and lung cancer), cancer almost anywhere in the body, and birth defects.<sup>45</sup>

4 71. It took five decades of public health initiatives, government intervention, impact  
 5 litigation, consumer education and tobacco regulation to finally see a significant drop in cigarette  
 6 smoking and nicotine addiction.

7 72. By 2014, the number of adults that reported using cigarettes had dropped to 18%, and  
 8 the number of adult smokers who reported quitting smoking increased from 50.8% in 2005 to 59% by  
 9 2016.<sup>46</sup> By 2014, teen smoking also hit a record low.<sup>47</sup> In June 2014, the Centers for Disease Control  
 10 and Prevention (“CDC”) reported that “in achieving a teen smoking rate of 15.7 percent, the United  
 11 States has met its national Healthy People 2020 objective of reducing adolescent cigarette use to 16  
 12 percent or less.”

13 73. The United States Surgeon General reported in 2014 that: “We are at a historic moment  
 14 in our fight to end the epidemic of tobacco use that continues to kill more of our citizens than any other  
 15 preventable cause. The good news is that we know which strategies work best. By applying these  
 16

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 20 <sup>45</sup> U.S. Dep’t of Health and Human Servs. *2014 Surgeon General's Report: The Health Consequences*  
 21 *of Smoking—50 Years of Progress* (2014), [https://www.cdc.gov/tobacco/data\\_statistics/sgr/50th-](https://www.cdc.gov/tobacco/data_statistics/sgr/50th-anniversary/index.htm#report)  
 22 [anniversary/index.htm#report](https://www.cdc.gov/tobacco/data_statistics/sgr/50th-anniversary/index.htm#report).

23 <sup>46</sup> Centers for Disease Control and Prevention, U.S. Dep’t of Health and Human Services, *Trends in*  
 24 *Cigarette Smoking Among High School Students—United States, 1991-2001*, 51 MORBIDITY &  
 25 MORTALITY WKLY. REP. 409 (May 17, 2002),  
 26 <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm5119a1.htm>; Teresa W. Wang et al., *Tobacco*  
 27 *Product Use Among Adults—United States, 2017*, 67 MORBIDITY & MORTALITY WKLY. REP. 1225  
 28 (Nov. 9, 2018), <https://www.cdc.gov/mmwr/volumes/67/wr/pdfs/mm6744a2-H.pdf>; U.S. Dep’t of  
 Health and Human Servs. *2014 Surgeon General's Report: The Health Consequences of Smoking—*  
*50 Years of Progress* (2014), [https://www.cdc.gov/tobacco/data\\_statistics/sgr/50th-](https://www.cdc.gov/tobacco/data_statistics/sgr/50th-anniversary/index.htm#report)  
[anniversary/index.htm#report](https://www.cdc.gov/tobacco/data_statistics/sgr/50th-anniversary/index.htm#report).

<sup>47</sup> Press Release, Centers for Disease Control and Prevention, *Cigarette smoking among U.S. high*  
*school students at lowest level in 22 years* (June 12, 2014),  
<https://www.cdc.gov/media/releases/2014/p0612-YRBS.html>.



1 strategies more fully and more aggressively, we can move closer to our goal of making the next  
 2 generation tobacco-free.”<sup>48</sup>

3 74. Where the public health community saw progress in curbing the use of cigarettes and  
 4 nicotine addiction, Defendants saw an opportunity.

5  
 6 **2. Following the Cigarette Industry Playbook, Defendants Sought to Market a**  
 7 **Product that would Create and Sustain Nicotine Addiction, but Without the**  
 8 **Stigma Associated with Cigarettes**

9 75. Seeking to build and dominate a new market for nicotine products without the baggage  
 10 of combustible cigarettes (i.e. well-established link to death and disease), JLI engineered a cool-  
 11 looking e-cigarette device capable of delivering more nicotine and fueling higher levels of consumer  
 12 addiction than ever before. JLI marketed that highly-addictive device as healthy, safe, cool and  
 13 available in kid-friendly flavors.

14 76. In doing so, JLI followed the cigarette industry’s playbook. Monsees admitted that  
 15 when creating JLI, he and Bowen carefully studied the marketing strategies, advertisements, and  
 16 product design revealed in cigarette industry documents that were uncovered through litigation and  
 17 made public under the November 1998 Master Settlement Agreement between the state Attorneys  
 18 General of forty-six states, five U.S. territories, the District of Columbia and the four largest cigarette  
 19 manufacturers in the United States. “[Cigarette industry documents] became a very intriguing space for  
 20 us to investigate because we had so much information that you wouldn’t normally be able to get in  
 21 most industries. And we were able to catch up, right, to a huge, huge industry in no time. And then we  
 22 started building prototypes.”<sup>49</sup>  
 23

24  
 25 <sup>48</sup> U.S. Dep’t of Health and Human Servs. *Let’s Make the Next Generation Tobacco-Free: Your Guide*  
 26 *to the 50th Anniversary Surgeon General’s Report on Smoking and Health* (2014),  
 27 <https://www.hhs.gov/sites/default/files/consequences-smoking-consumer-guide.pdf>

28 <sup>49</sup> Gabriel Montoya, *Pax Labs: Origins with James Monsees*, SOCIAL Underground,  
<https://socialunderground.com/2015/01/pax-ploom-origins-future-james-monsees/>.



77. In a thesis presentation Bowen and Monsees gave in 2004, Monsees candidly admitted, “The cigarette is actually a carefully engineered product for nicotine delivery and addiction.”<sup>50</sup> JLI researched how cigarette companies engineered their products and chemically manipulated nicotine to maximize delivery: “We started looking at patent literature. We are pretty fluent in ‘Patentese.’ And we were able to deduce what had happened historically in the tobacco industry.”<sup>51</sup> With access to the trove of documents made public to curb youth smoking and aid research to support tobacco control efforts, JLI was able to review literature on manipulating nicotine pH to maximize its delivery in a youth-friendly vapor with minimal “throat hit.”

78. Through studying industry documents, JLI learned that the cigarette industry had tried for years to figure out ways to create and sustain addiction by delivering more nicotine in way that would be easy to ingest—without the nausea, cough, or other aversive side effects that many new smokers experienced. In the 1970s, R.J. Reynolds scientists eventually found a solution: Combine the high-pH nicotine with a low-pH acid. The result was a neutralized compound referred to as nicotine salt. In a 1973 RJR memorandum titled “Cigarette concept to assure RJR a larger segment of the youth market,” RJR highlighted that this chemical manipulation of the nicotine content was expected to give its cigarettes an “additional nicotine ‘kick’” that would be more appealing and addictive. A young RJ Reynolds chemist, Thomas Perfetti, synthesized 30 different nicotine salt combinations, tested the salts’ ability to dissolve into a liquid, and heated them in pursuit of the “maximum release of nicotine.”<sup>52</sup> Perfetti published his results in a 1979 memo stamped “CONFIDENTIAL,” which was found among the documents that the FDA obtained from JLI in 2018. Relying on cigarette industry

<sup>50</sup> Jordan Crook, *This is the Stanford Thesis Presentation That Launched Juul*, TECH CRUNCH (Feb. 27, 2019), <https://techcrunch.com/2019/02/27/this-is-the-stanford-thesis-presentation-that-launched-juul/>.

<sup>51</sup> *Id.*

<sup>52</sup> Thomas A. Perfetti, *Smoking Satisfaction and Tar/Nicotine Control* (Dec. 7, 1978), <https://ca-times.brightspotcdn.com/3a/12/a5ec27874843a56e26b4ecd221/nicotine-salts-investigation.pdf>.

1 research like this, and assistance from Perfetti himself, JLI developed a cartridge-based e-cigarette  
2 using nicotine salts. As described in herein, JLI's use of nicotine salts, pioneered by major combustible  
3 tobacco companies, was a critical tool for addicting non-smokers, including youth.

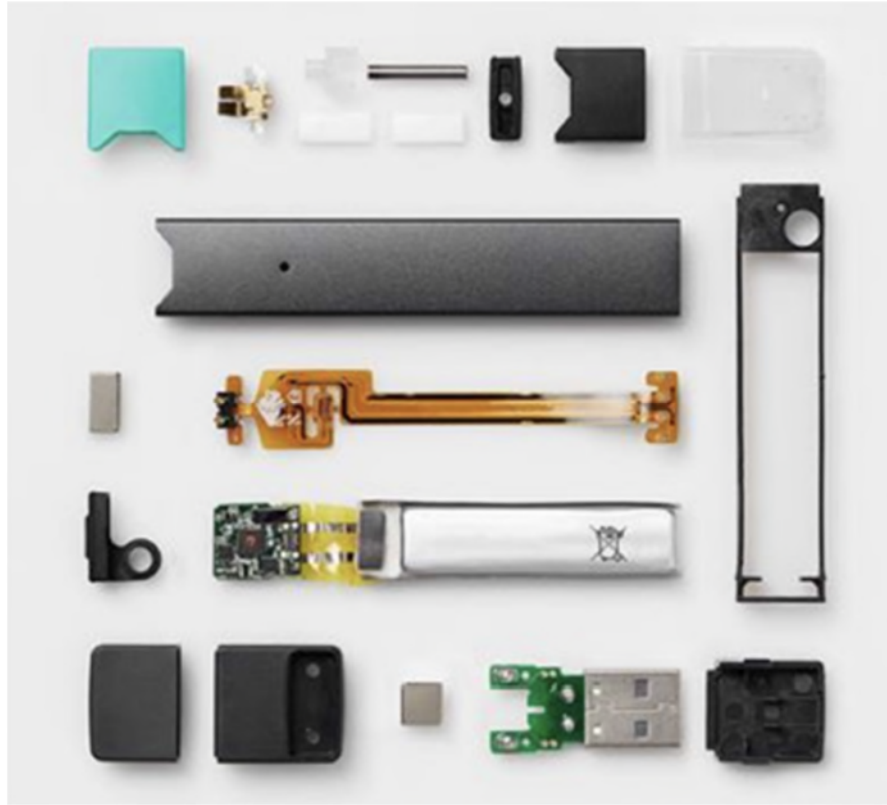
4  
5 79. JLI also engaged former cigarette industry researchers to consult on the design of their  
6 product. As Monsees noted in an interview with WIRED magazine: "The people who understood the  
7 science and were listed on previous patents from tobacco companies aren't at those companies  
8 anymore. If you go to Altria's R&D facility, it's empty."<sup>53</sup> The WIRED article stated that "[s]ome of  
9 those people are now on [PAX Lab, Inc.'s] team of advisers, helping develop J[UUL]."<sup>54</sup>

10 80. One of the keys to JLI's success was its ability to fuse addiction and technology. The  
11 JUUL e-cigarette system is comprised of three parts: (1) the JUUL e-cigarette device (2) the JUUL pod  
12 (with e-liquid), and (3) the Universal Serial Bus [USB] charger (collectively referred to herein as  
13 "JUUL"). The JUUL e-cigarette device is a thin, sleek rectangular e-cigarette device consisting of an  
14 aluminum shell, a battery, a magnet (for the USB-charger), a circuit board, an LED light, and a  
15 pressure sensor. JLI manufactures and distributes JUUL pods that contain liquid that includes nicotine,  
16 flavoring and other additives. Each JUUL pod is a plastic enclosure containing 0.7 milliliters of JLI's  
17 patented nicotine liquid and a coil heater. When a sensor in the JUUL e-cigarette detects the movement  
18 of air caused by suction on the JUUL pod, the battery in the JUUL e-cigarette device activates the  
19 heating element, which in turn converts the nicotine solution in the JUUL pod into a vapor consisting  
20 of nicotine, benzoic acid, glycerin, and propylene glycol along with myriad chemical flavorings and  
21 other chemicals, many of which are recognized as toxic.<sup>55</sup>

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25 <sup>53</sup> David Pierce, *This Might Just Be the First Great E-Cig*, WIRED (Apr. 21, 2015),  
26 [www.wired.com/2015/04/pax-juul-ecig/](http://www.wired.com/2015/04/pax-juul-ecig/).

27 <sup>54</sup> *Id.*

28 <sup>55</sup> King County & Seattle Public Health, *E-cigarettes and Vapor Products* (Dec. 30, 2019),  
<https://www.kingcounty.gov/depts/health/tobacco/data/e-cigarettes.aspx>.



81. JLI sells the JUUL pods in packs of four or two pods, and until recently, in a variety of enticing flavors. Many of the flavors have no combustible cigarette analog, including “cool” cucumber, fruit medley, “cool” mint, and crème brûlée. Figure 1 shows the JLI device and a JLI “Starter Kit” with four flavored JUUL pods:



**Figure 1**

82. JLI attempted to distinguish JUUL products from the death and disease associated with cigarettes by deliberately providing a false assurance of safety. For example, on May 8, 2018, a document titled “Letter from the CEO” appeared on JUUL’s website. The document stated: “[JUUL]’s simple and convenient system incorporates temperature regulation to heat nicotine liquid and deliver smokers the satisfaction that they want without the combustion and the harm associated with it.”<sup>56</sup>

83. JLI even took this message to ninth graders: in 2018, a representative from JLI spoke at a high school during a presentation for ninth graders, stating that JUUL “was much safer than cigarettes,” that the JUUL was “totally safe,” that the JUUL was a “safer alternative than smoking

<sup>56</sup> Letter from U.S. Food & Drug Admin. to Kevin Burns, CEO of Juul Labs, Inc. (Sept. 9, 2019), <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/juul-labs-inc-590950-09092019>.

1 cigarettes,” and that the “FDA was about to come out and say it [JUUL] was 99% safer than  
2 cigarettes . . . and that . . . would happen very soon.”<sup>57</sup>

3 84. This was not just a rogue employee. Internal messaging around JUUL, crafted by the  
4 executives, emphasized that JUUL was safer than smoking. In a “Marketing Update” presentation  
5 dated March 26, 2015, a message from then-Chief Marketing Officer Scott Dunlap stated that  
6 “[v]aporization technology is fundamentally disruptive, because it is *safer*, faster, more effective and  
7 less intrusive than alternatives.”<sup>58</sup> More than a year later, on April 28, 2016, Tim Danaher sent Tyler  
8 Goldman a slide deck aimed at investors which he said that “James [Monsees] owns” and “will pull /  
9 update the relevant slides.”<sup>59</sup> The deck claimed that “PAX Labs’ new delivery system is faster, *safer*,  
10 more effective and less intrusive than[,]” among other options, “[s]moking[.]”<sup>60</sup> The consistency of the  
11 wording in these presentations more than a year apart shows that this was standard company language.  
12

13 85. JLI’s mission was not to improve public health. Rather, JLI sought to introduce a new  
14 generation of users to nicotine. JLI’s business model was never about reducing addiction. As one JLI  
15 engineer put it: “We don’t think a lot about addiction here because we’re not trying to design a  
16 cessation product at all . . . anything about health is not on our mind.”<sup>61</sup>  
17

18 86. JLI, Bowen, and Monsees achieved their vision. Pioneering a nicotine delivery  
19 technology that eliminated the harshness of traditional free-base nicotine, JLI’s e-cigarette system  
20 provided users with palatable access to high-concentrations of nicotine like never before. Since the  
21 JUUL’s launch in 2015, JLI has become the dominant e-cigarette manufacturer in the United States. Its  
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25 <sup>57</sup> *Id.*

26 <sup>58</sup> INREJUUL\_00441986 (emphasis added).

27 <sup>59</sup> JLI00373324.

28 <sup>60</sup> JLI00373328 (emphasis added).

<sup>61</sup> Kevin Roose, *Juul’s Convenient Smoke Screen*, N.Y. TIMES (Jan. 11, 2019),  
<https://www.nytimes.com/2019/01/11/technology/juul-cigarettes-marketing.html>.

1 revenues grew by 700 percent in 2017 alone. By 2019, JLI owned three-quarters of the e-cigarette  
2 market.<sup>62</sup>

3 **3. Defendants Sought to Position JLI for Acquisition by a Major Cigarette Company.**

4 87. JLI, along with the Management Defendants, worked together to maintain and expand  
5 the number of nicotine-addicted e-cigarette users in order to ensure a steady and growing customer  
6 base.

7  
8 88. That growing customer base was crucial to JLI's and the Management Defendants' long  
9 term objective—lucrative acquisition by another company. They recognized that JLI's product, with its  
10 potential to dominate the nicotine products market by hooking new users, would appeal to one segment  
11 of the economy in particular: the cigarette industry.

12 89. JLI and the Management Defendants also recognized that their business goal—  
13 becoming part of the cigarette industry—was unlikely to endear them to the users that they needed to  
14 purchase their products. Years of anti-smoking campaigns have successfully stigmatized cigarette  
15 smoking. When Monsees and Bowen presented their thesis and product design to their classmates, they  
16 included a clip from a South Park episode showing the characters assembled at the Museum of  
17 Tolerance and shaming a smoker.<sup>63</sup>

18  
19 90. Monsees and Bowen needed to shape social norms such that the public attitude towards  
20 e-cigarettes would allow users to use their product without the stigma and self-consciousness smokers  
21 experienced. Monsees and Bowen saw a market opportunity in a generation of non-smoking users  
22 brought up on anti-smoking norms. In Monsees' words, they wanted to redesign the cigarette “to meet  
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25 <sup>62</sup> Dick Durbin et al., *Durbin & Senators to JUUL: You are More Interested in Profits Than Public*  
26 *Health*, Durbin Newsroom (Apr. 8, 2019), [https://www.durbin.senate.gov/newsroom/press-](https://www.durbin.senate.gov/newsroom/press-releases/durbin-and-senators-to-juul-you-are-more-interested-in-profits-than-public-health)  
27 [releases/durbin-and-senators-to-juul-you-are-more-interested-in-profits-than-public-health](https://www.durbin.senate.gov/newsroom/press-releases/durbin-and-senators-to-juul-you-are-more-interested-in-profits-than-public-health).

28 <sup>63</sup> Gabriel Montoya, *Pax Labs: Origins with James Monsees*, SOCIAL UNDERGROUND,  
<https://socialunderground.com/2015/01/pax-ploom-origins-future-james-monsees/>.

1 the needs of people who want to enjoy tobacco but don't self-identify with—or don't necessarily want  
2 to be associated with—cigarettes.”<sup>64</sup>

3 91. Part of this approach was consistently portraying JUUL as an enemy of the cigarette  
4 industry, with a publicly announced goal of eliminating the cigarette. In an interview, Bowen asserted  
5 that he and Monsees spent a lot of time talking about “the kind of typical thoughts of evil Big Tobacco  
6 companies like coming down and squashing you.”<sup>65</sup> The “Mission Statement” on JLI’s homepage  
7 proclaims:  
8

9 Our mission is to transition the world’s billion adult smokers away from combustible  
10 cigarettes, eliminate their use, and combat underage usage of our products.

11 We envision a world where fewer adults use cigarettes, and where adults who smoke  
12 cigarettes have the tools to reduce or eliminate their consumption entirely, should they so  
desire.<sup>66</sup>

13 In fact, JLI’s Chief Administrative Officer has publicly stated that the goal behind JLI is “eliminating  
14 cigarettes.”<sup>67</sup>

15 92. This public message of eliminating cigarettes and challenging tobacco companies stands  
16 in direct contrast with JLI’s actual business and investment strategy, which involved replicating in  
17 JUUL’s new market the tobacco companies’ historical success in the market for cigarettes. From the  
18 beginning, Bowen and Monsees actively sought the investment and assistance of major cigarette  
19 companies. Bowen and Monsees’ initial foray into the e-cigarette business, Ploom, launched its e-  
20 cigarette as the ModelOne in 2010, using pods of loose-leaf tobacco heated by butane. It did not catch  
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23  
24 <sup>64</sup> *Id.*; see also, INREJUUL\_00064696 (May 28, 2015) (Slides describing JUUL’s market overview  
and positioning as a “tech lifestyle product with a nicotine experience that satisfies, JUUL will appeal  
25 to regular ecig users and wealthy, tech savvy smokers – a significant portion of the market.”)

26 <sup>65</sup> Alison Keeley, *Vice Made Nice? A High-tech Alternative to Cigarettes*, Stanford MAGAZINE (2012),  
<https://stanfordmag.org/contents/vice-made-nice>.

27 <sup>66</sup> JUUL Labs, *Our Mission* (2019), <https://www.juul.com/mission-values>.

28 <sup>67</sup> Ashley Gould, *JUUL Labs is Committed to Eliminating Cigarettes*, CAL Matters (March 18, 2019),  
<https://calmatters.org/commentary/e-cigarette/>.



1 on. Ploom only sold a few thousand devices. By then a company with a dozen employees, Ploom was  
 2 faltering, in need of money, technological expertise, and marketing savvy.<sup>68</sup>

3 93. Help came from Japan Tobacco International (“Japan Tobacco”), a division of Japan  
 4 Tobacco Inc., the fourth-largest tobacco company in the world. In December 2011, Japan Tobacco and  
 5 Ploom entered into a strategic agreement, which gave Japan Tobacco a minority stake in Ploom and  
 6 made it a strategic partner. In a statement regarding the agreement, Monsees said, “We are very  
 7 pleased to partner with [Japan Tobacco] as their deep expertise, global distribution networks and  
 8 capital resources will enable us to enter our next phase of growth and capitalize on global expansion  
 9 opportunities.”<sup>69</sup> As Bowen explained in an interview, “We were still doing a lot of our own internal  
 10 product development, but now we had access to floors of scientists at [Japan Tobacco].”<sup>70</sup>

11 94. According to internal documents, JLI (then known as Pax) entered into a “strategic  
 12 partnership” with Japan Tobacco after it “evaluated all major tobacco industry companies.”<sup>71</sup> When  
 13 JLI was getting ready to launch JUUL, its business plan called for a “massive distribution for JUUL,”  
 14 to “be distributed by the four largest US tobacco distributors.”<sup>72</sup> In addition, in 2015, JLI counted  
 15 among its advisors Charles Blixt, the former general counsel of Reynold American, Chris Skillin,  
 16 former director of corporate business development at Altria Group, Bryan Stockdale, the former  
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22 <sup>68</sup> David H. Freedman, *How do you Sell a Product When You Really Can’t Say What it Does?*, Inc.,  
 23 [https://www.inc.com/magazine/201405/david-freedman/james-monsees-ploom-ecigarette-company-](https://www.inc.com/magazine/201405/david-freedman/james-monsees-ploom-ecigarette-company-marketing-dilemma.html)  
[marketing-dilemma.html](https://www.inc.com/magazine/201405/david-freedman/james-monsees-ploom-ecigarette-company-marketing-dilemma.html)

24 <sup>69</sup> *Innovative P’ship for Ploom and Japan Tobacco Int’l JTI to Take Minority Share in Ploom*, JAPAN  
 25 TOBACCO INT’L (Dec. 8, 2011), [https://www.jti.com/sites/default/files/press-](https://www.jti.com/sites/default/files/press-releases/documents/2011/innovative-partnership-for-ploom-and-japan-tobacco-international.pdf)  
[releases/documents/2011/innovative-partnership-for-ploom-and-japan-tobacco-international.pdf](https://www.jti.com/sites/default/files/press-releases/documents/2011/innovative-partnership-for-ploom-and-japan-tobacco-international.pdf).

26 <sup>70</sup> David H. Freedman, *How do you Sell a Product When You Really Can’t Say What it Does?*, INC.  
 27 MAGAZINE (2014), [https://www.inc.com/magazine/201405/david-freedman/james-monsees-ploom-](https://www.inc.com/magazine/201405/david-freedman/james-monsees-ploom-ecigarette-company-marketing-dilemma.html)  
[ecigarette-company-marketing-dilemma.html](https://www.inc.com/magazine/201405/david-freedman/james-monsees-ploom-ecigarette-company-marketing-dilemma.html).

28 <sup>71</sup> INREJUUL\_00371423 (Pax Labs company overview, Feb. 2015).

<sup>72</sup> INREJUUL\_00371447.



1 SVP/President & CEO of R.J. Reynolds / American Snuff Company, and Chris Coggins, a toxicologist  
2 at Reynolds for 20 years.<sup>73</sup>

3 95. JLI and the Management Defendants even retained the Investment Bank Stifel to help  
4 JLI “establish strong international partnerships with leading tobacco companies (“LT”) to accelerate  
5 JUUL.”<sup>74</sup> According to Stifel, “JUUL could be a multi-billion opportunity to LT [leading tobacco  
6 companies] over time,” and Stifel offered to manage a process that: “Identified the best Partner(s) for  
7 JUUL”; “Best positions JUUL to each Partner”; “Creates a catalyst for [leading tobacco company]  
8 decision making”; and “drives strong economic value and terms through competition.”<sup>75</sup> The end result  
9 of the process would be an exclusive agreement with the cigarette industry that would “maximize  
10 JUUL Growth Trajectory.”<sup>76</sup>

11 96. Stifel’s presentation to the JLI Board of Directors, which included each of the  
12 Management Defendants, also emphasized both the stagnant and declining cigarette market, and the  
13 sharply growing e-cigarette market.<sup>77</sup>  
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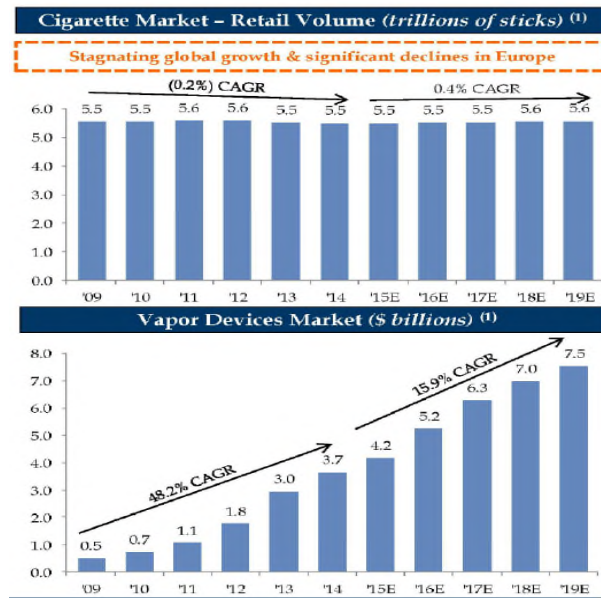
25 <sup>73</sup> INREJUUL\_00371458-INREJUUL\_00371459.

26 <sup>74</sup> INREJUUL\_00016386 (Stifel Presentation, Aug. 2015).

27 <sup>75</sup> *Id.*

28 <sup>76</sup> *Id.*

<sup>77</sup> INREJUUL\_0016399.



97. According to Stifel, “[s]ince 2013 [leading tobacco companies] have aggressively but unprofitably entered the vape category . . . with products that are not compelling.”<sup>78</sup> Stifel’s conclusion was that in light of the leading cigarette companies’ failures to develop an appealing e-cigarette product: “JUUL Presents a Prime Opportunity for [leading tobacco companies] to Compete with [vaporizers, tanks and mods] in Form Factor and Dominate the E-cig Experience Through Retail Channels that Leverage its Distribution Strengths.”<sup>79</sup>

98. Consistent with Stifel’s presentation, and the profits it was forecasting, a draft December 7, 2015 presentation to the board of directors included as a “management committee recommendation” that JLI position itself for “strategic alternatives (including licensing or sale)”.<sup>80</sup>

<sup>78</sup> INREJUUL\_0016400-INREJUUL\_0016401.

<sup>79</sup> INREJUUL\_0016404.

<sup>80</sup> INREJUUL\_00061757 (board meeting presentation, Dec. 7, 2015).

## JUUL

### Position JUUL for strategic alternatives (including licensing or sale) by EOY by strengthening the core proposition

- Improve IRI report traction through dollar contributions and ACV
- Continue to improve repeat rates by adding more pre-qualified consumer doors
- Significantly strengthen IP portfolio
- Continue to support pillar accounts as required to preserve a strong brand reputation

### Demonstrate a path towards positive JUUL margin contribution

- Ensure COGS improvements are realized and future improvements are clearly attainable
- Increase same store sales by focusing on high ROI doors
- Improve BDF requirements, particularly at pillar accounts, by reducing POP costs and negotiating improved sell-in cost repayment schedules.
- Reduce brand awareness and identity building programs until positive ROI is proven

99. The presentation also made clear that the “strategic alternative” for JLI envisioned by management was its acquisition by a large cigarette company:<sup>81</sup>

<sup>81</sup> INREJUUL\_00061833.  
PLAINTIFF’S COMPLAINT



1           102. These schemes were an overwhelming success. In December 2016, Monsees observed  
 2 in an email to Valani that “Soon enough [JUUL’s success] will catch the eyes of big tobacco and  
 3 they’ll either swing a new product more directly towards us, get aggressive about acquisition or do  
 4 both in parallel.”<sup>83</sup> By the close of 2017, according to Nielsen data, JLI had surpassed its competitors  
 5 in capturing 32.9% of the e-cigarette market, with British American Tobacco at 27.4% and Altria at  
 6 15.2%.<sup>84</sup> The total e-cigarette market expanded 40% to \$1.16 billion.<sup>85</sup>

8           103. By 2018, JLI represented 76.1% of the national e-cigarette market,<sup>86</sup> and JLI’s gross  
 9 profit margins were 70%.<sup>87</sup> In a complaint it filed in November 2018 against 24 vape companies for  
 10 alleged patent infringement, JLI asserted that it was “now responsible for over 95% of the growth in  
 11 the ENDS cartridge refill market in the United States” and included the following chart.<sup>88</sup>

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20 <sup>83</sup> JLI00380274.

21 <sup>84</sup> Ari Levy, *E-cigarette maker Juul is raising \$150 million after spinning out of vaping company*,  
 22 CNBC (Dec. 20, 2017), <https://www.cnbc.com/2017/12/19/juul-labs-raising-150-million-in-debt-after-spinning-out-of-pax.html>.

23 <sup>85</sup> *Id.*

24 <sup>86</sup> Robert K. Jackler et al., *JUUL Advertising Over Its First Three Years on the Market* at 2, STAN. RES.  
 INTO THE IMPACT OF TOBACCO ADVERT. (2019),  
 25 [http://tobacco.stanford.edu/tobacco\\_main/publications/JUUL\\_Marketing\\_Stanford.pdf](http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf).

26 <sup>87</sup> Dan Primack, *Scoop: The Numbers Behind Juul’s Investor Appeal*, AXIOS (July 2, 2018),  
 27 <https://www.axios.com/numbers-juul-investor-appeal-vaping-22c0a2f9-beb1-4a48-acee-5da64e3e2f82.html>.

28 <sup>88</sup> Verified Complaint Under Section 337 of the Tariff Act of 1930 at 6, *In the Matter of Certain Cartridges for Elec. Nicotine Delivery Sys. & Components Thereof*, Investigation No. 337-TA-1141 (USITC Nov. 19, 2018).

**Appendix 5: U.S. ENDS Pod Market Retail Unit Sales Growth 2018**

4-Week Unit Sales by End Date

	Nielsen			IRI		
	Apr 21	Sep 8	Share of Growth	Apr 22	Sep 9	Share of Growth
Total Market	36,002,645	55,773,039	100%	29,546,883	50,793,955	100%
Juul	22,618,886	41,501,172	95.5%	14,964,158	35,166,120	95.1%
Vuse	6,385,922	6,172,595	-1.1%	7,204,900	7,409,312	1.0%
MarkTen	3,677,300	4,240,285	2.8%	2,904,168	3,230,237	1.5%
Logic	1,785,167	2,018,023	1.2%	1,928,841	1,876,006	-0.2%
Blu	1,062,360	1,461,127	2.0%	1,305,209	1,937,225	3.0%
Other	473,010	379,837	-0.5%	1,239,607	1,175,055	-0.3%

104. JLI shattered previous records for reaching decacorn status, reaching valuation of over \$10 billion in a matter of months—four times faster than Facebook.<sup>89</sup> This all came just three years after its product launch.

**C. JLI and Bowen Designed a Nicotine Delivery Device Intended to Create and Sustain Addiction.**

105. JLI was well-aware from the historical cigarette industry documents that the future of any nicotine-delivery business depends on snaring kids before they age beyond the window of opportunity. One memo from a Lorillard marketing manager to the company's president put it most succinctly, "[t]he base of our business is the high school student."<sup>90</sup> It is no surprise, then, that the industry designed products specifically to attract and addict teen smokers. Claude Teague of R.J. Reynolds titled one internal memo "Research Planning Memorandum on Some Thoughts About New

<sup>89</sup> Zack Guzman, *Juul Surpasses Facebook As Fastest Startup to Reach Decacorn Status*, YAHOO! FIN. (Oct. 9, 2018), <https://finance.yahoo.com/news/juul-surpasses-facebook-fastest-startup-reach-decacorn-status-153728892.html>.

<sup>90</sup> Internal Memo from T.L. Achey, Lorillard Tobacco Company, to Curtis Judge, Product Information (August 1978).



Brands of Cigarettes for the Youth Market.” In it he frankly observed, “Realistically, if our Company is to survive and prosper, over the long term, we must get our share of the youth market. In my opinion this will require new brands tailored to the youth market.”<sup>91</sup> Dr. Teague noted that “learning smokers” have a low tolerance for throat irritation so the smoke should be “as bland as possible,” i.e., not harsh; and he specifically recommended an acidic smoke “by holding pH down, probably below 6.” As seen below, JLI heeded Dr. Teague’s advice.

**1. JLI and Bowen Made Highly Addictive E-Cigarettes Easy for Young People and Non-Smokers to Inhale.**

106. As combustible cigarettes were on the decline, e-cigarettes were introduced to the U.S. market beginning in 2007. Over time, e-cigarettes developed a small group of regular users, who were primarily current or former smokers. By 2014, the e-cigarette market in the U.S. was in decline.

107. E-cigarettes struggled to compete with combustible cigarettes, because of the technical challenge of delivering enough aerosolized nicotine to satisfy a smoker’s addiction in a palatable form.<sup>92</sup> Before JUUL, most e-cigarettes used an alkaline form of nicotine called free-base nicotine.<sup>93</sup> When aerosolized and inhaled, free-base nicotine is relatively bitter, irritates the throat, and is perceived as harsh by the user.<sup>94</sup> This experience is often referred to as a “throat hit.” The higher the concentration of free-base nicotine, the more intense the “throat hit.”<sup>95</sup> While some “harshness” would not have much impact on seasoned cigarette smokers, it would deter newcomers, or nicotine “learners,” as Claude Teague at R.J. Reynolds called young non-smokers decades ago.

<sup>91</sup> Internal Memo from Claude Teague, R.J. Reynolds, *Research Planning Memorandum on Some Thoughts About New Brands of Cigarettes for the Youth Market* (Feb. 2, 1973).

<sup>92</sup> Robert K. Jackler & Divya Ramamurthi, *Nicotine Arms Race: JUUL and the High-nicotine Product Market*, 28 TOBACCO CONTROL 623 (2019).

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

108. Before 2015, most e-liquids on the market were between 1% and 2% concentration; 3% concentrations were marketed as appropriate for users who were accustomed to smoking approximately forty cigarettes a day.<sup>96</sup> None of these e-liquids delivered as much nicotine as quickly as a combustible cigarette.

109. Around 2013, JLI scientists developed new e-liquids and new devices to increase the amount of nicotine that e-cigarettes could deliver to users and to reduce the throat hit. JLI scientists focused on nicotine salts rather than free-base nicotine, and they tested their formulations in a variety of ways.

## 2. JLI's Initial Experiments Measured Non-Smokers' "Buzz" Levels and Perceptions of Throat Harshness.

110. JLI intentionally designed its product to minimize "throat hit" and maximize "buzz." JLI's first known testing of JUUL-related products occurred in 2013, when it conducted "buzz" experiments that included non-smoker participants and measured "buzz" and throat harshness. JLI officers and directors Adam Bowen, Ari Atkins, and Gal Cohen served as the initial subjects in the "buzz" experiments. These early tests were performed with the assistance of Thomas Perfetti, the same RJR chemist who had studied nicotine salt decades ago to help RJR palatably deliver more nicotine.

111. In these early tests, JLI's goal was to develop a "buzz-effective e-cig formulation," which would principally turn on "effectiveness (buzz, harshness)," followed by shelf life and patentability.<sup>97</sup> The aim was to develop a nicotine salt formulation that maximized buzz, minimized harshness. "Employees tested new liquid-nicotine formulations on themselves or on strangers taking

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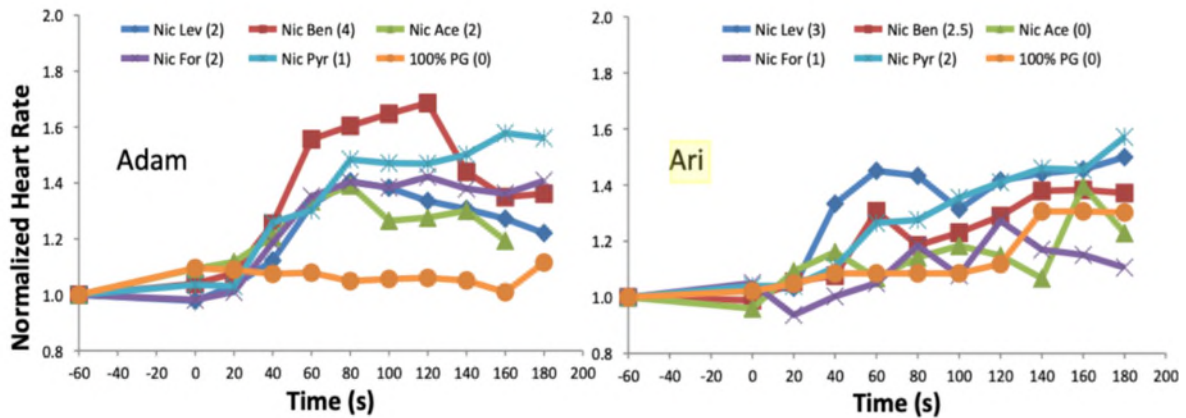
<sup>96</sup> *Id.*

<sup>97</sup> INREJUUL\_00002903.



smoke breaks on the street. Sometimes, the mix packed too much punch – enough nicotine to make some testers’ hands shake or send them to the bathroom to vomit . . . .”<sup>98</sup>

112. The “buzz” experiments, which used heart rate as a qualitative measurement for buzz, showed that Bowen tested a 4% benzoate (nicotine salt) solution, which caused his resting heart rate to increase by about 70% in under 2 minutes, far exceeding all other formulations JLI was considering.<sup>99</sup>



113. Because they personally consumed these formulations, Bowen, Cohen, and Atkins knew that the 4% benzoate solution delivered a strong buzz that matched or exceeded a cigarette but had minimal throat hit.

114. A later study by Anna K. Duell et al., which examined 4% benzoate solutions—the basis for JUUL’s subsequent commercial formulations—explains why there was so little throat hit. The Duell study determined that the fraction of free-base nicotine in JUUL’s “Fruit Medley” flavor was 0.05 and in “Crème Brulee” was 0.07.<sup>100</sup> Given total nicotine content of 58 mg/ml and 56 mg/ml in each flavor, respectively, these flavors have roughly 3-4 mg/ml free-base nicotine. For comparison, “Zen” brand e-liquid contains 17 mg/ml of nicotine—less than one-third of the total nicotine content of

<sup>98</sup> Chris Kirkham, *Juul Disregarded Early Evidence it was Hooking Teens*, REUTERS (Nov. 5, 2019), <https://www.reuters.com/investigates/special-report/juul-ecigarette/>.

<sup>99</sup> INREJUUL\_00002903.

<sup>100</sup> U.S. Patent No. 9,215, 895; Anna K. Duell et al., *Free-Base Nicotine Determination in Electronic Cigarette Liquids by H NMR Spectroscopy*, 31 CHEM. RES. TOXICOL. 431, 432 (Fig. 3).

JUUL’s flavors—but has a free-base fraction of 0.84,<sup>101</sup> resulting in over 14 mg/ml of free-base nicotine. The Duell Study’s authors found that the low free-base fraction in JUUL aerosols suggested a “decrease in the perceived harshness of the aerosol to the user and thus a greater abuse liability.”<sup>102</sup>

115. Dramatically reducing the throat hit is not necessary for a product that is aimed at smokers, who are accustomed to the harshness of cigarette smoke, but it very effectively appeals to nonsmokers, especially youths. The cigarette industry has long recognized this; a published study of industry documents concluded that “product design changes which make cigarettes more palatable, easier to smoke, or more addictive are also likely to encourage greater uptake of smoking.”<sup>103</sup> The Duell study concluded that JLI’s use of nicotine salts “may well contribute to the current use prevalence of JUUL products among youth.”<sup>104</sup>

116. Reducing the harshness of nicotine also allows more frequent use of e-cigarettes, for longer periods of time, and masks the amount of nicotine being delivered. By removing the physiological drawbacks of inhaling traditional free-base nicotine, JLI’s technology removes the principal barrier to nicotine consumption and addiction. The Duell study further concluded that JLI’s creation of a non-irritating vapor that delivers unprecedented amounts of nicotine is “particularly problematic for public health.”<sup>105</sup>

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<sup>101</sup> Anna K. Duell et al., *Free-Base Nicotine Determination in Electronic Cigarette Liquids by H NMR Spectroscopy*, 31 CHEM. RES. TOXICOL. 431 (hereinafter “Duell Study”).

<sup>102</sup> *Id.* at 431–34.

<sup>103</sup> David A. Kessler, *Juul Says It Doesn’t Target Kids. But Its E-Cigarettes Pull Them In*, N.Y. TIMES (July 31, 2019), <https://www.nytimes.com/2019/07/31/opinion/juul-kids.html>.

<sup>104</sup> Duell Study at 433 (citing J.G. Willett, et al., *Recognition, Use and Perceptions of JUUL Among Youth and Young Adults*, TOBACCO CONTROL 054273 (2018)).

<sup>105</sup> *Id.* at 431.

1           **3. JUULs Rapidly Deliver Substantially Higher Doses of Nicotine than Cigarettes.**

2           117. In 2014, after the “buzz” experiments, JLI engineers ran a pilot pharmacokinetic study  
 3 in New Zealand, called the Phase 0 Clinical Study.<sup>106</sup> The participants in the study—Adam Bowen,  
 4 Gal Cohen, and Ari Atkins<sup>107</sup>—had their blood drawn while vaping prototype JUUL aerosols. From  
 5 these measurements, the scientists calculated key pharmacokinetic parameters, including maximum  
 6 concentration of nicotine in the blood (Cmax) and total nicotine exposure (Area Under the Curve or  
 7 AUC). JLI reported the results in U.S. Patent No. 9,215,895 (the ’895 patent), for which JLI applied on  
 8 October 10, 2014,<sup>108</sup> and which was granted in December 2015. The named inventors on the patent  
 9 were Adam Bowen and Chenyue Xing  
 10

11           118. Among the formulations was a 4% benzoate formulation, which was made with 3.8%  
 12 benzoic acid and 5% nicotine, as well as propylene glycol and vegetable glycerin.<sup>109</sup> As a comparator,  
 13 JLI also measured nicotine blood levels after smoking Pall Mall cigarettes. The Phase 0 study also  
 14 tested a 2% benzoate formulation, which had a similar Cmax as a Pall Mall cigarette, and a variety of  
 15 other formulations.<sup>110</sup> The following graph shows the pharmacokinetic results of the Phase 0 study:  
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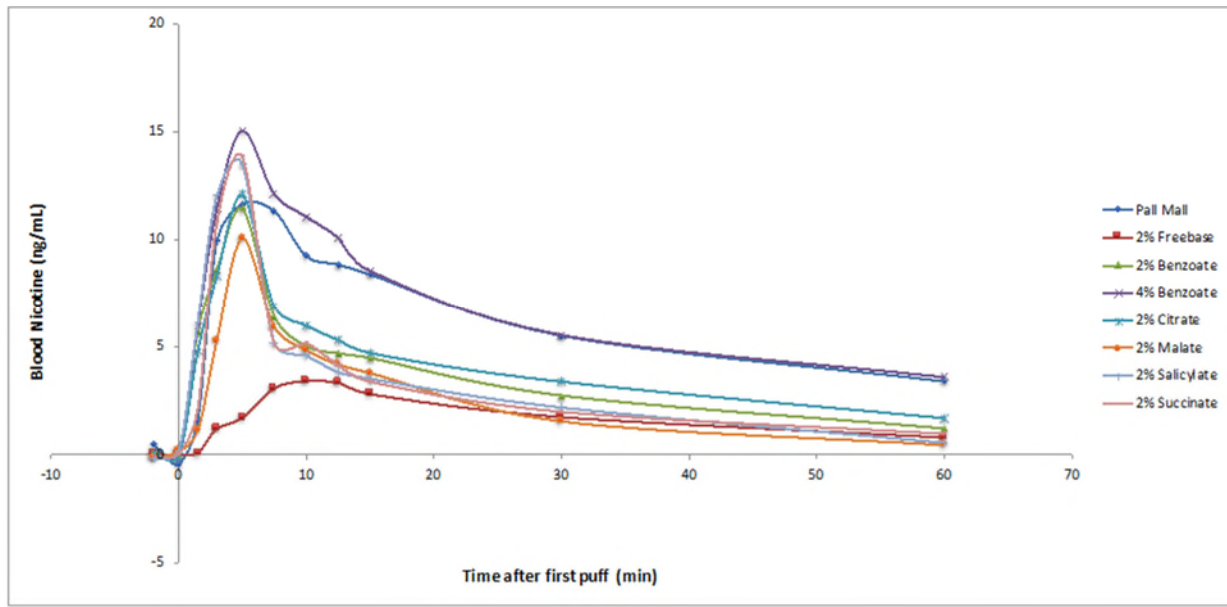
24 <sup>106</sup> INREJUUL\_00350930.

25 <sup>107</sup> *Id.*

26 <sup>108</sup> This application was a continuation of U.S. Patent Application No. 14/271,071 (filed May 6, 2014),  
 which claimed the benefit of U.S. Provisional Patent Application Serial No. 61/820,128, (filed May  
 6, 2014), and U.S. Provisional Patent Application Serial No. 61/912,507 (filed December 5, 2013).

27 <sup>109</sup> U.S. Patent No. 9,215,895, at 19:63-20:4 (filed Dec. 22, 2015).

28 <sup>110</sup> INREJUUL\_00024437.



119. According to Table 1 in the patent, the C<sub>max</sub> (the maximum nicotine concentration in blood) for Pall Mall cigarettes was 11.65 ng/mL, and for 4% benzoate it was 15.06 ng/mL, which is nearly 30% higher. The total nicotine exposure (as measured by Area Under the Curve or AUC) was 367.5 ng \* min/mL for Pall Mall cigarettes and 400.2 ng \* min/mL for 4% benzoate, which is almost 9% higher. The 4% benzoate formulation had the highest C<sub>max</sub> and AUC of any of the formulations measured.

120. Describing these results, JLI's '895 patent all but brags that it surpassed a commercially available combustible cigarette (Pall Mall) in maximum delivery and nearly rivaled it in how soon it could deliver peak nicotine. According to the '895 patent, "certain nicotine salt formulations [i.e., JLI's] provide satisfaction in an individual superior to that of free base nicotine, and more comparable to the satisfaction in an individual smoking a traditional cigarette."<sup>111</sup> The patent further explains that the "rate of nicotine uptake in the blood" is higher for some claimed nicotine salt formulations "than for other nicotine salt formulations aerosolized by an electronic cigarette . . . and likewise higher than

<sup>111</sup> U.S. Patent No. 9,215, 895, at 7:51-55 (filed Dec. 22, 2015) (emphasis added).

1 nicotine free-base formulations, while the peak nicotine concentration in the blood and total amount of  
 2 nicotine delivered appears comparable to a traditional cigarette.”<sup>112</sup>

3 121. In other words, JLI distinguishes itself, and established the patentability of its e-liquids,  
 4 by reference to their superlative ability to deliver nicotine, both in terms of peak blood concentration  
 5 and total nicotine delivery. The rate of nicotine absorption is key to providing users with the nicotine  
 6 “kick”<sup>113</sup> that drives addiction and abuse.<sup>114</sup> Because “nicotine yield is strongly correlated with tobacco  
 7 consumption,”<sup>115</sup> a JUUL pod with more nicotine will strongly correlate with higher rates of  
 8 consumption of JUUL pods, generating more revenue for JUUL. For example, a historic cigarette  
 9 industry study that looked at smoker employees found that “the number of cigarettes the employees  
 10 smoked per day was directly correlated to the nicotine levels.”<sup>116</sup> In essence, JLI distinguished itself  
 11 based on its e-liquids’ extraordinary potential to addict.  
 12

13 122. Another study corroborates the key result of the Phase 0 study that the 4% benzoate  
 14 solution delivers more nicotine than a combustible cigarette.<sup>117</sup> The Reilly study tested JUUL’s  
 15 tobacco, crème brûlée, fruit medley, and mint flavors and found that a puff of JUUL delivered  $164 \pm$   
 16 41 micrograms of nicotine per 75 mL puff. By comparison, a 2014 study using larger 100 mL puffs  
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19 <sup>112</sup> *Id.* at 7:63-8:4.

20 <sup>113</sup> Internal Memo from Frank G. Colby, R.J. Reynolds, *Cigarette Concept to Assure RJR a Larger Segment of the Youth Market* (Dec. 4, 1973).

21 <sup>114</sup> As the National Institutes of Health has noted, the “amount and speed of nicotine delivery . . . plays  
 22 a critical role in the potential for abuse of tobacco products.” U.S. Dep’t of Health & Human Servs.,  
 23 *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease, A Report of the Surgeon General* at 181 (2010),  
 24 [https://www.ncbi.nlm.nih.gov/books/NBK53017/pdf/Bookshelf\\_NBK53017.pdf](https://www.ncbi.nlm.nih.gov/books/NBK53017/pdf/Bookshelf_NBK53017.pdf).

25 <sup>115</sup> Martin J. Jarvis et al., *Nicotine Yield From Machine Smoked Cigarettes and Nicotine Intakes in Smokers: Evidence From a Representative Population Survey*, 93 NT’L CANCER INST. 134 (Jan. 17, 2001), <https://academic.oup.com/jnci/article/93/2/134/2906355>

26 <sup>116</sup> Letter from Peggy Martin to Study Participants, *Resume of Results from Eight-Week Smoking Study*, UCSF Library, 1003285443-5443 (Sept. 10, 1971).

27 <sup>117</sup> Samantha M. Reilly et al., *Free Radical, Carbonyl, and Nicotine Levels Produced by JUUL Electronic Cigarettes*, 21 NICOTINE TOBACCO RESEARCH 1274 (Aug. 19, 2019),  
 28 <https://www.ncbi.nlm.nih.gov/pubmed/30346584>.

found that a Marlboro cigarette delivered 152-193  $\mu\text{g}/\text{puff}$ .<sup>118</sup> Correcting to account for the different puff sizes between these two studies, this suggests that, at 75 mL/puff, a Marlboro would deliver about 114-145  $\mu\text{g}/\text{puff}$ . In other words, the Reilly study suggests that JUUL delivers more nicotine per puff than a Marlboro cigarette.

123. Additionally, depending on how the product is used, an e-cigarette with the 4% benzoate solution is capable of delivering doses that are materially higher than those seen in the Phase 0 study. As a paper published by the European Union notes: “[A]n e-cigarette with a concentration of 20 mg/ml delivers approximately 1 milligram of nicotine in five minutes (the time needed to smoke a traditional cigarette, for which the maximum allowable delivery is 1 mg of nicotine).”<sup>119</sup> With at least 59 mg/ml of nicotine in a salt form that increases the rate and efficiency of uptake (and even with a lower mg/ml amount), a JUUL pod easily exceeds the nicotine dose of a combustible cigarette. Not surprisingly, the European Union has banned all e-cigarette products with a nicotine concentration of more than 20 mg/ml nicotine, and other countries have considered similar regulations.<sup>120</sup>

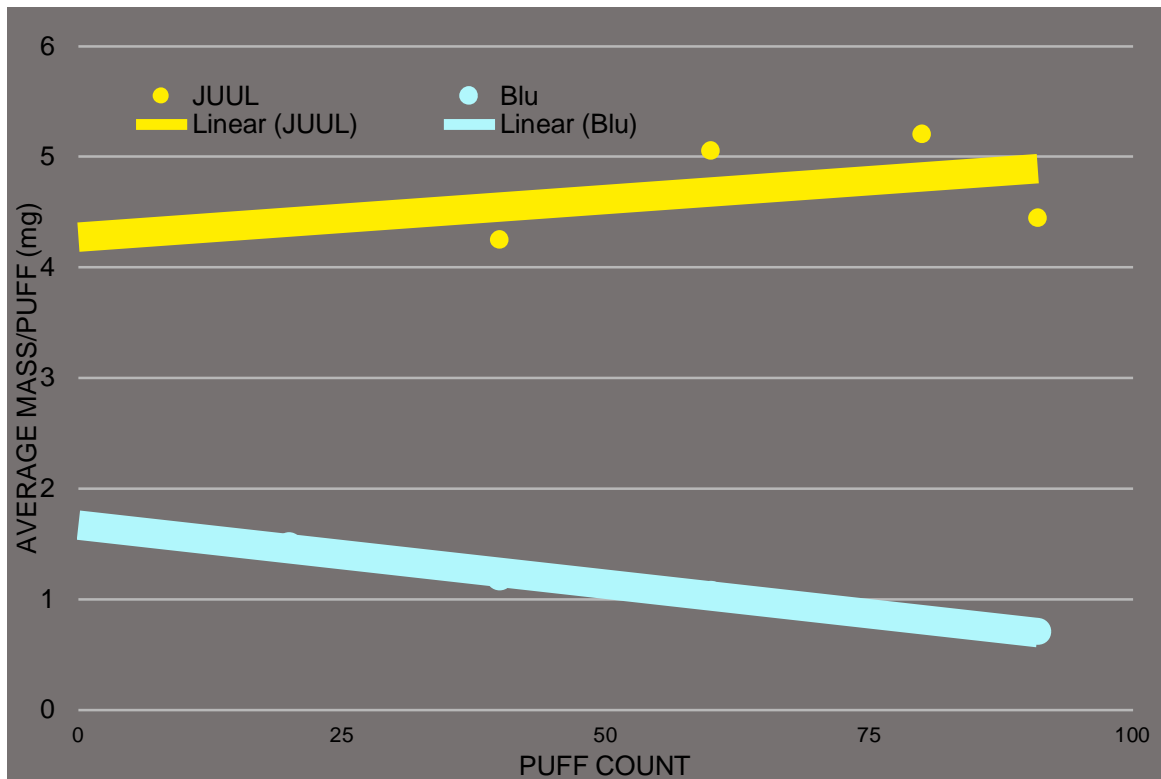
124. Around 2014, JLI engineers designed the JUUL vaping device, which also was designed for addictiveness. On average, the JUUL was engineered to deliver between four to five milligrams of aerosol per puff, which is an unusually massive puff<sup>121</sup>:

<sup>118</sup> Megan J. Schroeder & Allison C. Hoffman, *Electronic Cigarettes and Nicotine Clinical Pharmacology*, 23 TOBACCO CONTROL ii30 (May 23, 2014), [www.ncbi.nlm.nih.gov/pmc/articles/PMC3995273/](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3995273/).

<sup>119</sup> E-Cigarettes, European Comm’n, [https://ec.europa.eu/health/sites/health/files/tobacco/docs/fs\\_ecigarettes\\_en.pdf](https://ec.europa.eu/health/sites/health/files/tobacco/docs/fs_ecigarettes_en.pdf) (citing United Kingdom Medicines and Healthcare Products Regulatory Agency and industry reports).

<sup>120</sup> Charis Girvalaki et al., *Discrepancies in Reported Versus Measured Nicotine Content of E-cigarette Refill Liquids Across Nine European Countries Before and After the Implementation of the EU Tobacco Products Directive*, 55 EUR. RESPIR. J. 1900941 (2020), <https://doi.org/10.1183/13993003.00941-2019>.

<sup>121</sup> INREJUUL\_00442040-INREJUUL\_00442080; INREJUUL\_00442064



125. Given the concentration of nicotine in a JUUL pod, four to five milligrams of JUUL e-liquid contains about 200-250 micrograms ( $\mu\text{g}$ ) of nicotine. As noted by Dan Myers, a JLI scientist, in an internal 2018 email to Adam Bowen and Ziad Rouag, a regulatory employee at JLI at the time, “much more nicotine than 150 per puff could be problematic” because, according to Myers, cigarettes deliver between around 100-150  $\mu\text{g}$  of nicotine per puff.<sup>122</sup> In other words, JUUL’s precisely calibrated nicotine delivery system was specifically engineered to aerosolize up to 2.5 times as much nicotine per puff as a cigarette. Myers also noted that “Adam put in his recommendation of ~4mg/puff as the target” for a pharmacokinetic study.<sup>123</sup>

126. JLI scientists realized in 2014 that the amount of nicotine that JUUL e-cigarettes delivered could be problematic. Chenyue Xing stated that “[y]ou hope that they get what they want,

<sup>122</sup> INREJUUL\_00347306.

<sup>123</sup> *Id.*



1 and they stop,” but JLI scientists were concerned that “a Juul—unlike a cigarette—never burns out,” so  
 2 the device gives no signal to the user to stop. According to Xing, JLI scientists “didn’t want to  
 3 introduce a new product with stronger addictive power.”<sup>124</sup> For this reason, “the company’s engineers  
 4 explored features to stop users from ingesting too much of the drug, too quickly. JLI’s founders  
 5 applied for a patent in 2014 that described methods for alerting the user or disabling the device when  
 6 the dose of a drug such as nicotine exceeds a certain threshold.”<sup>125</sup> For example, “[o]ne idea was to  
 7 shut down the device for a half-hour or more after a certain number of puffs[.]”<sup>126</sup> But upper  
 8 management rejected the concerns that the scientists raised, and “[t]he company never produced an e-  
 9 cigarette that limited nicotine intake.”<sup>127</sup>

11 127. As another option, JLI could have limited the duration of each puff to prevent the JUUL  
 12 from delivering doses of nicotine exceeding those of a cigarette on a per-puff basis. Instead, it  
 13 programmed the device to emit puffs for up to six seconds.<sup>128</sup> JUUL knew from the Phase 0  
 14 pharmacokinetic study in 2014 and the CH-1702 pharmacokinetic study in 2017 that puffs of three  
 15 seconds generate pharmacokinetic profiles matching that of a cigarette.<sup>129</sup>

17 128. Further warnings about the addictive power of the JUUL e-cigarette—and its appeal to  
 18 youths—came from consumer research that Ploom commissioned in 2014. Ploom hired the consumer  
 19 research firm Tragon to do research with prototypes of the JUUL e-cigarette. On September 30, 2014,  
 20 Lauren Collinsworth, a consumer researcher at Tragon, emailed Chelsea Kania, a marketing employee  
 21 at Ploom, with some of the preliminary results from the studies. She stated that the testing showed that  
 22

24 <sup>124</sup> Chris Kirkham, *Juul Disregarded Early Evidence it was Hooking Teens*, REUTERS (Nov. 5, 2019),  
 25 <https://www.reuters.com/investigates/special-report/juul-ecigarette/>.

26 <sup>125</sup> *Id.*

27 <sup>126</sup> *Id.*

28 <sup>127</sup> *Id.*

<sup>128</sup> INREJUUL\_00431693

<sup>129</sup> INREJUUL\_00351218; INREJUUL\_00351239.



1 “the younger group is open to trying something new and liked J1 [the JUUL prototype] for being  
 2 smart, new, techy, etc.”<sup>130</sup> Ms. Collinsworth added that “the qualitative information suggests J1 could  
 3 fit into the e-cig or vapor category for the younger group. The qualitative findings suggested *this*  
 4 *product isn’t going to fit as well with consumers who are looking to cut back on the cigarette*  
 5 *intake.*”<sup>131</sup>

7 129. On October 1, 2014, Ms. Collinsworth followed up with additional comments. She  
 8 stated that “[t]he delivery was almost too much for some smokers, especially those used to regular e-  
 9 cigarettes. When they approached the product like they would a Blu or other inexpensive e-cig, they  
 10 were floored by the delivery and didn’t really know how to control it.”<sup>132</sup>

11 130. Survey responses showed that the least important product attribute for the adult smokers  
 12 and non-smokers in that group was “buzz.”<sup>133</sup> Comments from the study’s subjects included  
 13 “overwhelming when I first inhaled,” “too much for me,” “it was too strong,” and “it caught me off-  
 14 guard.”<sup>134</sup> Comments on the device’s style said JUUL “might manage to make smoking cool again”;  
 15 others “thought it was a data storage device.”<sup>135</sup>

17 131. The final results from this consumer research were distributed to upper management,  
 18 including to then-CEO James Monsees<sup>136</sup> and then-Chief Marketing Officer Richard Mumby.<sup>137</sup>

19 132. In late 2014, knowing the results of the buzz tests, the Phase 0 study and the consumer  
 20 research, JLI executives, including Bowen, selected the 4% benzoate formulation to serve as the model  
 21 for all formulations to be used in the JUUL product to be released in 2015. All JUUL formulations at  
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23 <sup>130</sup> JLI00365905.

24 <sup>131</sup> *Id.* (emphasis added).

25 <sup>132</sup> JLI00365709.

26 <sup>133</sup> JLI00365176.

27 <sup>134</sup> INREJUUL\_00058345.

28 <sup>135</sup> *Id.*

<sup>136</sup> JLI00364678.

<sup>137</sup> JLI00364487.

1 launch used the same amount of nicotine and benzoic acid as did the formulation that resulted in the  
 2 highest nicotine blood levels in the Phase 0 study. JUUL pods were foreseeably exceptionally  
 3 addictive, particularly when used by persons without prior exposure to nicotine.

4 **4. JLI and the Management Defendants Knew That JUUL was Unnecessarily**  
 5 **Addictive Because It Delivered More Nicotine Than Smokers Needed or Wanted.**

6 133. The JUUL e-cigarette launched in 2015. After the launch, JLI and the Management  
 7 Defendants continued to collect information about the addictiveness of JUUL. This information  
 8 confirmed what they already knew: JUUL was exceptionally dangerous because of its addictiveness.

9 134. For example, on April 22, 2017, an e-cigarette retailer emailed Gal Cohen expressing  
 10 concern about the addictiveness of JLI's products. He wrote:

11 I am very concerned about the JLI products. People's addiction behavior is SEVERE  
 12 with this JLI device. I don't think I can justify carrying this anymore.

13 The Brooklyn store is run by someone else and he still wants to carry it. I am not really  
 14 happy about this. It was a simple product for users who do not want to fill tanks and  
 15 change atomizers and it was easy to sell, but I really don't feel good about selling it. I  
 16 know we talked about this back a few years ago before we were carrying the product, but  
 17 I am curious to know what is in the liquid. I know the nicotine salts are added but I would  
 18 like to know what else is in it. Do you guys have a GCMS or ingredient listing for the  
 19 liquid? Are there other additives? I want to feel more comfortable so I can keep carrying  
 20 these, but **I have seen what it is doing to people and I am very uncomfortable with it.**  
 Last year when the news came to me and wanted me to help them with the story that teens  
 were using JLI I shut that story down by telling them it wasn't true. **It is true. kids**  
**are getting hooked on this thing and they don't even understand half the time that**  
**it has nicotine in it! Little kids.. like 14 and 15 year olds.** They try to come in my shop  
 and we tell them it is 21 and over and get them out... but it is REALLY bad!

21 I have kids calling and trying to order using delivery services as well. We will only allow  
 22 pickup and delivery for regular customers whose ID we have already checked... but they  
 23 TRY and that worries me.. because the smoke shops and bodegas are NOT checking that  
 the person they are picking up for is old enough to buy the product.

24 I agree that it is certainly less hazardous than smoking... **but to intentionally increase**  
 25 **the addictiveness of nicotine seems really irresponsible and makes me feel like Big**  
 26 **Tobacco pushing people onto a really addictive product.** I just don't think that it is  
 necessary and I don't feel good about it.

27 Anyway... if there is any info you have that might make me feel better about selling it let  
 me know... or if you could send me ingredient listing (I know Pax applied for the patent

1 on the liquid with the nicotine salts so it should be ok to share now?) I would appreciate  
2 it.<sup>138</sup>

3 135. Another example came just days later. On April 28, 2017, JLI held a science meeting  
4 discussing the scientific information in JLI's possession with outside scientists. Notes from the  
5 meeting state that "concern was raised that because the nicotine update [sic] is slightly faster the data  
6 could be interpreted as feeding an addiction faster. Given the current climate with addictions to  
7 OxyContin how the data is presented needs to be considered carefully."<sup>139</sup>

8 136. Additionally, Dan Myers wrote to Adam Bowen in October 2017 that "single puff data  
9 from Juul suggests that a small number of puffs, at the beginning of the pod's lifetime, may contain 2-  
10 3X" the levels of nicotine in the puffs from the rest of the pod, "i.e., 200-300 [μ]g/puff."<sup>140</sup> This is  
11 consistent with a central goal of the product's design: capturing "users with the first hit."<sup>141</sup>

12 137. None of this information was a surprise, nor did it cause JLI or the Management  
13 Defendants to change JLI's products or marketing. In fact, they embraced it. On November 3, 2017,  
14 Steven Hong, JLI's Director of Consumer Insights, described JUUL's "design and chemical  
15 formulation (fast acting nic salts)" as JLI's "ace in the hole" over the competition.<sup>142</sup>

16 138. The following year, JLI and the Management Defendants obtained even more evidence  
17 that the amount of nicotine in JUULpods was needlessly high. By no later than May of 2018, JLI had  
18 completed Phase I of "Project Bears," a JLI study of smoker and vapor nicotine strength preferences.  
19 The results showed that "[a]cross the smoker segments, product liking is very similar[.]" and the  
20 "heaviest smokers (21+ cigs) like 1.7% more than higher strengths" such as 3% and 5%.<sup>143</sup> Similarly,  
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23  
24 <sup>138</sup> INREJUUL\_00264888-INREJUUL\_00264890.

25 <sup>139</sup> INREJUUL\_00230416.

26 <sup>140</sup> INREJUUL\_00434580-INREJUUL\_00434590.

27 <sup>141</sup> Chris Kirkham, *Juul Disregarded Early Evidence it was Hooking Teens*, REUTERS (Nov. 5, 2019),  
<https://www.reuters.com/investigates/special-report/juul-ecigarette>.

28 <sup>142</sup> INREJUUL\_00228928-INREJUUL\_00228930.

<sup>143</sup> INREJUUL\_00260068.

1 “for those who evaluated the 5% pod, when given the choice of lower level pod strengths, at least half  
2 would choose a lower strength pods.”<sup>144</sup>

3 139. The same tests also showed that, contrary to JLI’s expectations, smokers did not  
4 increase their use of the 1.7% formulation relative to the 5% formulation in order to achieve nicotine  
5 satisfaction. “Smoking volume does seem to be a driver of vaping volume, but this does not vary much  
6 by strength within a given smoker type.”<sup>145</sup>

7 140. Thus, Project Bears revealed that 5% JUULpods delivered more nicotine than necessary  
8 to satisfy cigarette smokers, even those characterized as “heavy” smokers.<sup>146</sup>

9 141. At some point during the coordination between JLI, the Management Defendants, and  
10 Altria, but no later than the due-diligence period for Altria’s investment in JLI, either JLI (through its  
11 employees) or one or more of Defendants Bowen, Monsees, Pritzker, Huh, and Valani provided Altria  
12 with a copy of the Project Bears findings.<sup>147</sup>

13 142. Nonetheless, JLI, the Management Defendants, and Altria have maintained and  
14 promoted the 5% JUULpods as JLI’s flagship offering of JUULpods although they knew that even  
15 current smokers prefer a *lower* nicotine content. They pushed the 5% JUULpod because it hooked  
16 users faster and kept them addicted to nicotine.<sup>148</sup>

17 143. In addition to Project Bears, JLI and the Management Defendants (and potentially  
18 Altria) were aware of other internal studies that established that its 5% JUUL pod product would not  
19 be a successful cessation tool, as it was not attractive to an audience looking to reduce cigarette  
20 consumption.<sup>149</sup>

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21 <sup>144</sup> INREJUUL\_00260065.

22 <sup>145</sup> INREJUUL\_00244200.

23 <sup>146</sup> *Id.*

24 <sup>147</sup> *Id.*

25 <sup>148</sup> *Id.*

26 <sup>149</sup> *Id.*

**5. JUUL’s Design Did Not Look Like a Cigarette, Making it Attractive to Non-Smokers and Easy for Young People to Use Without Detection.**

144. Not only did JUUL contain high levels of nicotine that delivered a strong “buzz” from the first puff, JLI designed its product to look appealing to youth and non-smokers. In January 2015, six months before JUUL’s launch, JLI’s Marketing Director, Sarah Richardson, identified “key needs” for JUUL’s PR strategy, including “Establish premium positioning to entice the “masses” to follow the trend setters; own the “early adopter” / “cool kid” equity as we build out volume”, and highlighted that “JUUL deliberately doesn’t resemble e-cigs or cigalikes” that are “awkward” and “douche-y”.<sup>150</sup> Instead, JUUL is “elegant” and “cool”.

145. JLI’s strategy to position a nicotine-delivery device as the cool thing to do is not new. Decades before, Dr. Teague from R.J. Reynolds observed: “pre-smokers” face “psychological pressure” to smoke if their peers are doing so, “a new brand aimed at a young smoker must somehow be the ‘in’ brand and its promotion should emphasize togetherness, belonging and group acceptance, while at the same time emphasizing ‘doing one’s own thing.’”<sup>151</sup> Again, JUUL followed the cigarette playbook verbatim.

146. JLI knew that among its target audience, young people, cigarette smoking had become increasingly stigmatized. JLI wanted to create a product that would create “buzz” and excitement, totally different from the image of addicted cigarette smokers huddling outside their workplaces in the cold to get their nicotine fix.

147. Unlike the distinct smell and odor emitted from combustible cigarettes, JUUL emits a reduced aerosol with a nearly undetectable scent. And unlike other e-cigarettes, the JUUL device does not produce large plumes of smoke. Instead, the vapor cloud is very small and dissipates very quickly,

<sup>150</sup> INREJUUL\_00057291 et seq.

<sup>151</sup> Internal RJR Memo, Claude Teague, *Research Planning Memorandum on Some Thoughts About New Brands of Cigarettes for the Youth Market*, (Feb. 2, 1973).

1 allowing for concealed use. As a result, young users can, and do, use JUUL—in class or at home—  
2 without detection.

3 148. The JUUL device is also designed to be small and discrete. Fully assembled, the device  
4 is just over 9.5 cm in length and 1.5 cm wide. The JUUL device resembles a memory stick and can be  
5 charged in a computer's USB drive. This design allows the device to be concealed in plain sight,  
6 camouflaged as a thumb-drive, for use in public spaces, like schools and even charged in school  
7 computers. JLI has been so successful in emulating harmless technology that its small, rectangular  
8 devices are often mistaken for—or passed off as—flash drives. According to one high school senior,  
9 “that’s what people tell the teachers a lot, too, if you charge it in class, they’ll just say it’s my flash  
10 drive.”  
11



149. The ability to conceal a JUUL is part of the appeal for adolescents. The devices are small and slim, so they fit easily in a closed hand or a pocket. The ease and simplicity of use—there is nothing to light or unwrap, not even an on-off switch—also make it possible to covertly use a JUUL behind a turned back, which has become a trend in many schools. As a police officer told reporters, JUUL use is “incredibly prevalent in schools,” including both high schools and middle schools, and that it is hard to catch kids in the act of using JUUL because the device does not produce a large vapor cloud. As the officer explained, students will “just take a little hit or puff off them and then can hold the vapor in their mouth for a little while . . . There’s minimal vapor. They’ll also just blow into their sleeve or into their hoodie.”<sup>152</sup> Finding new ways to hide the ever-concealable JUUL has spawned products designed just for that purpose, such as apparel that allows the wearer to use the device while it is concealed in the drawstring of a hoodie or the strap of a backpack.<sup>153</sup>

150. Referred to as “the iPhone of e-cigarettes,” JLI’s design was also slick and high-tech, which made it appealing to youth. JLI co-founder Bowen drew on his experience as a design engineer at Apple Inc. to make JUUL resonate with Apple’s popular aesthetics. This high-tech style made JUULs look “more like a cool gadget and less like a drug delivery device. This wasn’t smoking or vaping, this was JUULing.”<sup>154</sup> The evocation of technology makes JUUL familiar and desirable to the younger tech-savvy generation, particularly teenagers. According to a 19-year-old interviewed for the Vox series By Design, “our grandmas have iPhones now, normal kids have JUULs now. Because it looks so modern, we kind of trust modern stuff a little bit more so we’re like, we can use it, we’re not

<sup>152</sup> *Juuling at School*, KOMO News (2019), <https://komonews.com/news/healthworks/dangerous-teen-trend-juuling-at-school>.

<sup>153</sup> Evie Blad, ‘*Juuling*’ and Teenagers: 3 Things Principals and Teachers Need to Know, EDUC. WK. (July 18, 2018), <https://www.edweek.org/ew/articles/2018/07/18/juuling-and-teenagers-3-things-principals-and.html>.

<sup>154</sup> *How JUUL Made Nicotine Go Viral*, VOX (Aug. 10, 2018), <https://www.youtube.com/watch?v=AF0poKBUyok>.



1 going to have any trouble with it because you can trust it.”<sup>155</sup> A 16-year-old agreed, explaining that  
2 “the tech aspect definitely helps people get introduced to it and then once they’re introduced to it,  
3 they’re staying, because they are conditioned to like all these different products. And then this is  
4 another product. And it’s just another product. Until you’re addicted to nicotine.”<sup>156</sup>

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6 151. JUUL’s design also included an LED light, which allowed users to active “party mode,”  
7 whereby the LED light would flash a rainbow of colors. “Party mode” is activated by the user by  
8 waving the JUUL device back and forth until the white LED light starts flashing multiple colors, so  
9 that the rainbow colors are visible while the person inhales from the JUUL device. “Party mode” can  
10 also be permanently activated on the JUUL by the user quickly and firmly slapping the JUUL against  
11 the palm of the hand, until the LED light starts flashing multiple colors permanently. Party mode on  
12 the JUUL is described by users to be “like an Easter egg in a video game” and allows for “some cool  
13 tricks that are going to drive [] friends crazy.”<sup>157</sup> This feature was another characteristic that set JUUL  
14 apart from other e-cigarettes on the market, and made it even more appealing and “cool” to young  
15 users.  
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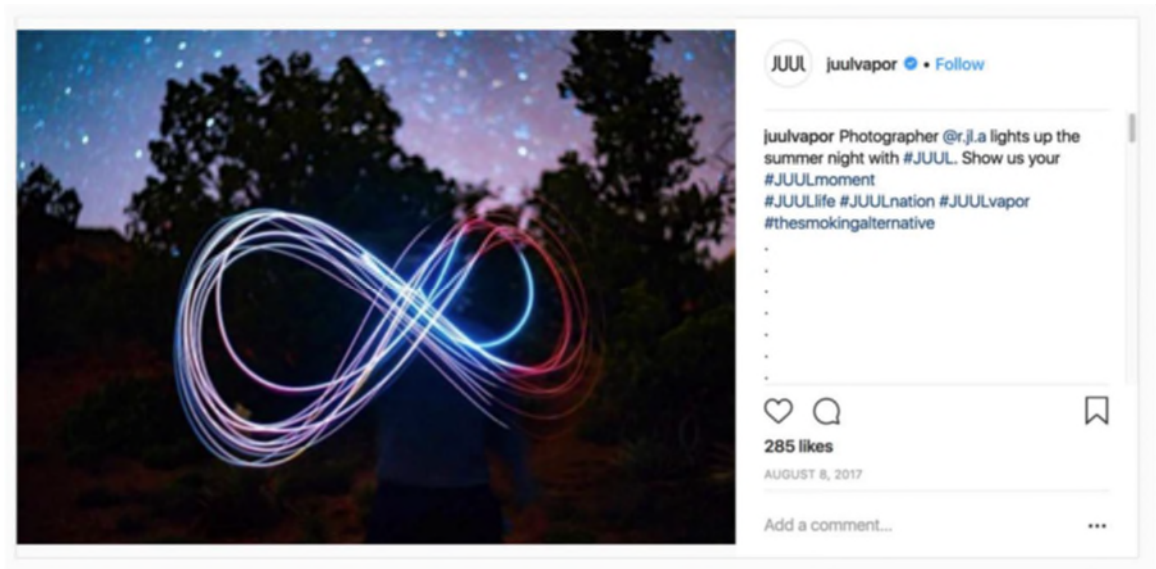
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26 <sup>155</sup> *Id.*

27 <sup>156</sup> *Id.*

28 <sup>157</sup> Jon Hos, *Getting Your Juul Into Party Mode*, (Jul. 12, 2018), <https://vapedrive.com/getting-your-juul-into-party-mode>.





152. According to Dr. David Kessler, a former Commissioner of the FDA and current Professor of Pediatrics at the University of California, San Francisco, JUUL’s “fundamental design appears to ease young people into using these e-cigarettes and ultimately, addiction.”<sup>158</sup> Dr. Kessler emphasized the reduced harshness of JUUL’s nicotine salt formulation, the high nicotine content, discreet vapor cloud, and use of flavors as design features that appeal to youth.<sup>159</sup> On April 24, 2018, the FDA sent JLI a letter, based on the FDA’s concern “about the popularity of JUUL products among youth” and stated that this popularity may be related to “the product design.”<sup>160</sup> As a result, the FDA requested documents related to product design, including its “shape or form,” “nicotine salt formulation” and “nicotine concentration/content,” “flavors,” and “features such as: appearance, or lack thereof, or plume . . . [and] USB port rechargeability.”

<sup>158</sup> David A. Kessler, *Juul Says It Doesn’t Target Kids. But Its E-Cigarettes Pull Them In*, N.Y. TIMES (July 31, 2019), <https://www.nytimes.com/2019/07/31/opinion/juul-kids.html>.

<sup>159</sup> *Id.*

<sup>160</sup> Letter from Matthew R. Holman, Director of the Office of Science at the Center for Tobacco Products, to Ziad Rouag, Vice President of Regulatory & Clinical Affairs, JUUL Labs, Inc. (Apr. 24, 2018), <https://www.fda.gov/media/112339/download>.

**6. JLI Enticed Newcomers to Nicotine with Kid-Friendly Flavors Without Ensuring the Flavoring Additives Were Safe for Inhalation.**

**a. JIL Develops Flavored JUUL Products That Would Appeal to Youth.**

153. Cigarette companies have known for decades that flavored products are key to getting young people to acclimate to nicotine. A 1972 Brown & Williamson memorandum: Youth Cigarette – New Concepts, specifically noted the “well known fact that teenagers like sweet products.”<sup>161</sup> A 1979 Lorillard memorandum concluded that younger customers would be “attracted to products with ‘less tobacco taste,’” and even proposed borrowing data from the “Life Savers” candy company to determine which flavors enjoyed the widest appeal among youth.<sup>162</sup>

154. Altria’s subsidiary U.S. Smokeless Tobacco Company (formerly called United States Tobacco Company) described the initiation of new customers through flavored products as “the graduation theory”:

New users of smokeless tobacco—attracted to the product for a variety of reasons—are most likely to begin with products that are milder tasting, more flavored, and/or easier to control in the mouth. After a period of time, there is a natural progression of product switching to brands that are more full-bodied, less flavored, have more concentrated “tobacco taste” than the entry brand.<sup>163</sup>

<sup>161</sup> Marketing Innovations, Inc., *Brown & Williamson Tobacco Corp. Project Report: Youth Cigarette—New Concepts*, U.C.S.F. Truth Tobacco Indus. Documents (Sept. 1972), <https://www.industrydocuments.ucsf.edu/tobacco/docs/#id=hazpd0040>.

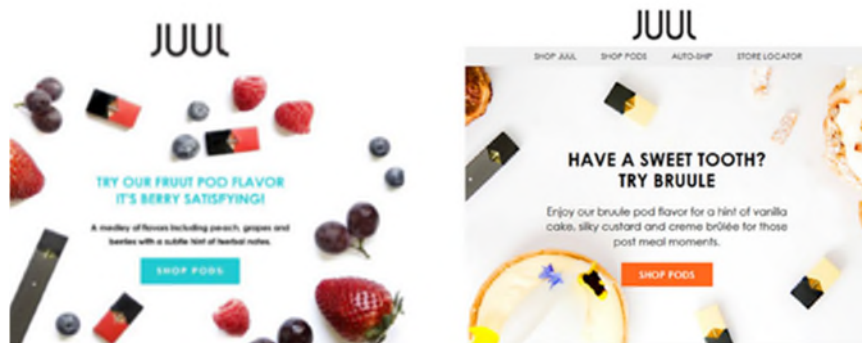
<sup>162</sup> *Flavored Tobacco FAQs*, Students Working Against Tobacco, <http://swatflorida.com/uploads/fightresource/Flavored%20Tobacco%20Industry%20Quotes%20and%20Facts.pdf> (citing Sedgfield Idea Sessions 790606-790607 (June 8, 1979), Bates No. 81513681/3691) (last visited Mar. 27, 2020).

<sup>163</sup> G.N. Connolly, *The marketing of nicotine addiction by one oral snuff manufacturer*, 4 TOBACCO CONTROL 73-79 (1995), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1759392/pdf/v004p00073.pdf>.

155. A sales manager who worked at U.S. Tobacco in the 1980s told the Wall Street Journal that “They talked about graduation all the time—in sales meetings, memos and manuals for the college program. It was a mantra.”<sup>164</sup>

156. A 2004 study found that seventeen-year-old smokers were more than three times as likely as those over the age of twenty-five to smoke flavored cigarettes, and they viewed flavored cigarettes as safer.<sup>165</sup>

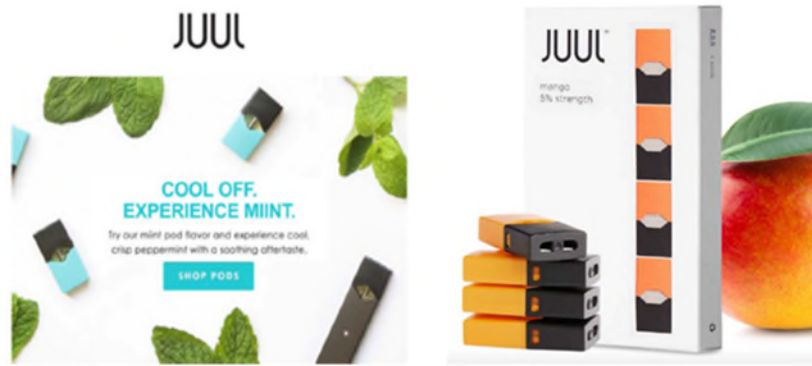
157. In June 2015, JUUL came to market in four flavors including tabaac (later renamed tobacco), fruut (later renamed fruit medley), bruulé (later renamed crème brulee), and miint (later renamed mint).



158. JUUL later offered other kid-friendly flavors, including cool mint, cucumber, and mango.

<sup>164</sup> Alix Freedman, *Juiced Up: How a Tobacco Giant Doctors Snuff Brands to Boost Their ‘Kick,’* WALL ST. J. (Oct. 26, 1994), <https://www.industrydocuments.ucsf.edu/tobacco/docs/#id=mlch0185>.

<sup>165</sup> Gardiner Harris, *Flavors Banned From Cigarettes to Deter Youth*, N.Y. TIMES (Sept. 22, 2009), <https://www.nytimes.com/2009/09/23/health/policy/23fda.html>.



159. In 2009, the FDA banned flavored cigarettes (other than menthol) as its first major anti-tobacco action pursuant to its authority under the Family Smoking Prevention and Tobacco Control Act of 2009. “Flavored cigarettes attract and allure kids into addiction,” Health and Human Services Assistant Secretary Howard Koh, MD, MPH, said at a news conference held to announce the ban.<sup>166</sup> In January 2020, the FDA banned flavored e-cigarette pods, other than “Tobacco” and “Menthol” flavors, in response to “epidemic levels of youth use of e-cigarettes” because these products are “so appealing” to children.”<sup>167</sup>

160. The availability of e-liquids in flavors that appeal to youth increases rates of e-cigarette adoption by minors. A national survey found that that 81% of youth aged twelve to seventeen who had ever used e-cigarettes had used a flavored e-cigarette the first time they tried the product, and that 85.3% of current youth e-cigarette users had used a flavored e-cigarette in the past month. Moreover, 81.5% of current youth e-cigarette users said they used e-cigarettes “because they come in flavors I like.”<sup>168</sup>

<sup>166</sup> Daniel J. DeNoon, *FDA Bans Flavored Cigarettes: Ban Includes Cigarettes With Clove, Candy, and Fruit Flavors*, WebMD (Sept. 22, 2009), <https://www.webmd.com/smoking-cessation/news/20090922/fda-bans-flavored-cigarettes#2>.

<sup>167</sup> U.S. Food & Drug Admin., *FDA Finalizes Enforcement Policy on Unauthorized Flavored Cartridge-Based E-cigarettes that Appeal to Children, Including Mint* (Jan. 22, 2020), <https://www.fda.gov/news-events/press-announcements/fda-finalizes-enforcement-policy-unauthorized-flavored-cartridge-based-e-cigarettes-appeal-children>.

<sup>168</sup> See Bridget K. Ambrose et al., *Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014*, 314 JAMA 1871 (2015). Another peer-reviewed study concluded that young adults who

161. Adding flavors to e-liquids foreseeably increases the risk of nicotine addiction by making it easier and more pleasant to ingest nicotine.<sup>169</sup> Research has shown that adolescents whose first tobacco product was flavored are more likely to continue using tobacco products than those whose first product was not flavored.

162. In a recent study, 74% of youth surveyed indicated that their first use of a JUUL was of a flavored JUUL pod.<sup>170</sup>

163. Research shows that when youth see advertisements for flavored e-cigarettes, they believe the advertisements and products are intended for them.<sup>171</sup>

164. Flavors like mint and menthol are attractive to youth. According to Robin Koval, CEO and president of Truth Initiative, mint and menthol are among the most popular flavors for youth and that “[w]e also know, as does the tobacco industry, that menthol has been and continues to be the starter flavor of choice for young cigarette users.” According to the FDA, “younger populations have the highest rate of smoking menthol cigarettes” and “menthol in cigarettes is likely associated with increased initiation and progression to regular [] cigarette smoking.”<sup>172</sup>

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use electronic cigarettes are more than four times as likely to begin using regular cigarettes as their peers who have not used e-cigarettes. See Brian A. Primack, et al. *Initiation of Traditional Cigarette Smoking after Electronic Cigarette Use Among Tobacco-Naïve US Young Adults*, 131 AM. J. MED. 443.e1 (2018).

<sup>169</sup> See U.S. Dep’t of Health & Human Servs., *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease: A Report of the Surgeon General*, Chapter 4 (Centers for Disease Control and Prevention ed. 2010), <https://www.ncbi.nlm.nih.gov/books/NBK53018/#ch4.s92>.

<sup>170</sup> Karma McKelvey et al., *Adolescents and Young Adults Use in Perceptions of Pod-based Electronic Cigarettes*, 1 JAMA NETWORK OPEN e183535 (2018), <https://doi:10.1001/jamanetworkopen.2018.3535>.

<sup>171</sup> D.C. Petrescu, et al., *What is the Impact of E-Cigarette Adverts on Children’s Perceptions of Tobacco Smoking? An Experimental Study*, 26 TOBACCO CONTROL 421 (2016); Julia C. Chen-Sankey et al., *Perceived Ease of Flavored E-Cigarette Use and E-Cigarette Use Progression Among Youth Never Tobacco Users*, 14 PLOS ONE 1 (2019).

<sup>172</sup> *Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol Versus Nonmenthol Cigarettes* at 5, FDA, <https://www.fda.gov/media/86497/download> (last visited Mar. 28, 2020).

165. A significant majority of under-age users chose flavored e-cigarette products.<sup>173</sup> By at least early 2017, JLI knew that its flavors had attracted young people and non-smokers in droves.<sup>174</sup> Instead of taking corrective action or withdrawing the kid friendly flavors, JLI capitalized on their popularity with kids continued to promote JUUL's flavors. In a social media post from August 2017, for example, JLI tweeted "Beat The August Heat with Cool Mint" and "Crisp peppermint flavor with a pleasant aftertaste."<sup>175</sup> In another August 2017 tweet, JLI compared JUUL to dessert: "Do you brulée? RT [re-tweet] if you enjoy dessert without the spoon with our Creme Brulee #JUULpods."<sup>176</sup>

166. JLI asserts that it did not intend its flavors to appeal to underage users. After eleven Senators sent a letter to JLI questioning its marketing approach and kid-friendly e-cigarette flavors, JLI visited Capitol Hill and told Senators that it never intended its products to appeal to kids and did not realize they were using the products, according to a staffer for Senator Richard Durbin<sup>177</sup>. JLI's statements to Congress—which parallel similar protests of innocence by cigarette company executives—were false.

167. A former JUUL manager, who spoke to The New York Times on the condition that his name not be used, said that within months of JUUL's 2015 introduction, it became evident that

<sup>173</sup> Karen A. Cullen et al., *E-cigarette Use Among Youth in the United States*, 322 JAMA 2095 (2019), <https://tinyurl.com/y3g75gmg> (“Among current exclusive e-cigarette users, an estimated 72.2% . . . of high school students and 59.2% . . . of middle school students used flavored e-cigarettes. . .”).

<sup>174</sup> See INREJLI\_00265068 (Feb. 13, 2017 internal JLI email string: “. . . [f]lavors are important for retention – especially when you consider the switching effectiveness of JLI. Would we still have these people as customers if we didn’t offer fruit or dessert flavors? Hard to say on this alone, but if we removed our highest quality flavors (mint or mango), we would surely risk churn.”)

<sup>175</sup> JUUL Labs, Inc. (@JUULvapor), Twitter (Aug. 4, 2017), [http://tobacco.stanford.edu/tobacco\\_web/images/pod/juul/twitter/large/twitter\\_39.jpg](http://tobacco.stanford.edu/tobacco_web/images/pod/juul/twitter/large/twitter_39.jpg).

<sup>176</sup> Kathleen Chaykowski, *The Disturbing Focus of Juul's Early Marketing Campaigns*, Forbes (Nov. 16, 2018), <https://www.forbes.com/sites/kathleenchaykowski/2018/11/16/the-disturbing-focus-of-juuls-early-marketing-campaigns/#3da1e11b14f9>.

<sup>177</sup> Lorraine Woellert & Sarah Oweremohle, *Juul Tries to Make Friends in Washington as Regulators Circle*, POLITICO (Dec. 28, 2018), <https://www.politico.com/story/2018/12/08/juul-lobbying-washington-1052219>.



1 teenagers were either buying JUULs online or finding others who made the purchases for them. Some  
2 people bought more JUUL kits on the company's website than they could individually use—  
3 sometimes ten or more devices at a time. "First, they just knew it was being bought for resale," said the  
4 former senior manager, who was briefed on the company's business strategy. "Then, when they saw  
5 the social media, in fall and winter of 2015, they suspected it was teens."<sup>178</sup>  
6

7 168. JLI's use of flavors unfairly targeted not only youth, but unsuspecting adults as well. By  
8 positioning JUUL pods as a flavor-oriented product rather than a system for delivering a highly  
9 addictive drug, JLI deceptively led users to believe that JUUL pods were not only healthy (or at least  
10 essentially harmless), but also a pleasure to be enjoyed regularly, without guilt or adverse effect.  
11

12 **b. Defendants Developed and Promoted the Mint Flavor and Sought to  
Preserve its Market.**

13 169. While JLI and the Management Defendants were developing and marketing their  
14 flavored products to appeal to and recruit youth, Altria, recognizing the value of those young  
15 "replacement smokers" committed itself to the cause. With the shared goal to grow the number of  
16 nicotine-addicted users, and as detailed further herein, JLI's leadership, the Management Defendants,  
17 and Altria set out to do whatever was necessary to create and preserve the lucrative market for flavors.  
18 In order to maximize the value of its mint line of JUULpods, JLI, with the support of the Management  
19 Defendants, chemically and socially engineered its mint pods to become the most popular "flavor"  
20 among youth, including through extensive surveillance of youth behavior and preferences, all while  
21 seeking to conceal mint's appeal to youth.  
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27 <sup>178</sup> Matt Richtel & Sheila Kaplan, *Did Juul Lure Teenagers and Get 'Customers for Life'?*, N.Y. TIMES  
28 (Aug. 27, 2018), <https://www.nytimes.com/2018/08/27/science/juul-vaping-teen-marketing.html>.

170. In July 2013, Reynolds American Inc.<sup>179</sup> released the Vuse, the first-known cartridge-based nicotine salt e-cigarette to reach the domestic market.<sup>180</sup> Altria entered the nicotine salt market one month later, with the MarkTen cig-a-like.<sup>181</sup> JLI would enter the market in June 2015.

171. Though mint was one of the least popular e-cigarette flavor categories with youth in 2015, trailing the fruit and dessert categories,<sup>182</sup> Reynolds, Altria and JLI had all introduced mint-flavored products within a year of each company's initial release. By mid-2014, Reynolds had added "Mint, Rich Mint, Spearmint, [and] Wintergreen" to its Vuse lineup.<sup>183</sup> By February 2015, Altria's Nu Mark LLC, under the leadership of Joe Murillo (JLI's current regulatory head), released a Winter Mint flavor for MarkTen.

172. Unlike Reynolds and Altria, which released mint products after first releasing a menthol variant, JLI skipped menthol and went straight to mint, adding Menthol in late 2017 around the same time it released its mango JUULpods.

173. JLI's flavored JUULpods were particularly popular with its underage users and, when mango was introduced, it was the underage user's flavor of choice.

174. JLI, the Management Defendants, and Altria recognized both the potential of using flavors to hook kids and the inevitability that the government would seek to regulate said flavors. So,

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<sup>179</sup> Reynolds is now a wholly owned subsidiary of British American Tobacco.

<sup>180</sup> See FAQs, RJR Vapor Co., LLC, <http://www.vusevapor.com/faqs/product/> ("Since Vuse's launch in 2013, all of our closed systems available for sale nationally (i.e., Vuse Solo, Vuse Ciro, Vuse Vibe, and Vuse Alto) include nicotine salts.").

<sup>181</sup> Additional Info, Nu Mark LLC, <https://markten.com> ("certain varieties" of MarkTen Original "contain ... acetic acid, benzoic acid, and lactic acid.").

<sup>182</sup> See M.B. Harrell et al., *Flavored E-cigarette Use: Characterizing Youth, Young Adult, and Adult Users*, 5 PREVENTIVE MEDICINE REPS. 33-40, § 3.3 (Mar. 2017), <https://www.sciencedirect.com/science/article/pii/S2211335516301346>.

<sup>183</sup> See Sen. Richard Durbin, et al., *Gateway to Addiction?* (April 14, 2014), <https://www.durbin.senate.gov/imo/media/doc/Report%20-%20E-Cigarettes%20with%20Cover.pdf>.



they sought to solidify the market presence of a “substitute” youth-friendly flavor—mint—which might escape regulation and preserve JLI’s astronomical sales figures.

**(i) JLI Manipulates Chemistry of Mint JUUL Pods.**

175. One recent study found that JLI’s mango had the lowest free-base content, making it the least harsh formula; and that mint had the highest free-base content (30% more free-base than mango), making mint the formula with the strongest nicotine impact:<sup>184</sup>

	$C_{HA}/C_{NIC}$	$\alpha_{fb}$
Benzoic acid		
JUUL ‘Cool Mint’ (5% nicotine)	0.97*	0.13
JUUL ‘Classic Menthol’ (5% nicotine)	0.98*	0.13
JUUL ‘Crème Brûlée’ (5% nicotine)	0.97*	0.12
JUUL ‘Fruit Medley’ (5% nicotine)	0.99*	0.12
JUUL ‘Cool Cucumber’ (5% nicotine)	1.00*	0.11
JUUL ‘Classic Tobacco’ (5% nicotine)	1.00*	0.11
JUUL ‘Virginia Tobacco’ (5% nicotine)	1.00*	0.11
JUUL ‘Mango’ (5% nicotine)	0.99*	0.09
JUUL ‘Virginia Tobacco’ (3% nicotine)	0.94*	0.14
JUUL ‘Mint’ (3% nicotine)	1.04*	0.11
Averages for JUUL	0.99±0.03 SD	0.12±0.01

**Anna K. Duell et al., Nicotine in tobacco product aerosols: ‘It’s déjà vu all over again’**

176. These findings evidence JLI, the Management Defendants, and the Altria Defendants’ plan to make the flavor whose lifespan they were working hard to preserve the most potent when it got into the hands of nonsmokers, including youth.

**c. JLI’s Youth Surveillance Programs Confirmed that Mint JUUL Pods are Preferred by Teens.**

177. In January 2018, Kevin Burns, JLI’s new CEO, deployed his experience as the former CEO of a yogurt company to begin developing JUUL’s flavor portfolio.

<sup>184</sup> See Duell AK, et al. *Nicotine in Tobacco Product Aerosols: “It’s Déjà vu All Over Again,”* 5 TOBACCO CONTROL (Dec. 17, 2019), <https://tobaccocontrol.bmj.com/content/tobaccocontrol/early/2019/12/16/tobaccocontrol-2019-055275.full.pdf>.

1           178. One part of this initiative included studying consumer reactions to flavor names. By  
 2 February 2018, McKinsey & Company had provided a roadmap to JLI's Consumer Insights  
 3 department, which included multiple flavor studies including a flavor "likability" tests, which was  
 4 carried out under JUUL's marketing and commercial department.<sup>185</sup>

5           179. In April 2018, JLI received a document request from the FDA on April 24, 2018,  
 6 seeking information about the design and marketing of JLI's products, among other things.<sup>186</sup>

7           180. In response, JLI announced a commitment of \$30 million to youth prevention efforts  
 8 and began sending JLI representatives to schools to present what were essentially advertising  
 9 campaigns for JUUL products. This conduct resulted in a Warning Letter from the FDA's Center for  
 10 Tobacco Products to JLI in September 2019.<sup>187</sup>

11           181. Under the guise of this youth prevention program, *JLI directly studied 13- to 17-year-*  
 12 *old teens' e-cigarette flavor preferences.*<sup>188</sup> These studies, undertaken at a time when JLI and Altria  
 13 were coordinating their activities, asked teens to rank a variety of e-cigarette flavors in terms of appeal,  
 14 and included the names of current JUUL flavors, JUUL flavors under development, and flavors offered  
 15 by JLI's competitors. Though they were not made public, through document requests, two such studies  
 16 have been identified from April 2018.

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24 <sup>185</sup> INREJUUL\_00053172.

25 <sup>186</sup> Matthew Holman, U.S. Food & Drug Admin., to Ziad Rouag, Juul Labs, Inc., *Letter from Director*  
 26 *of Office of Science, Center for Tobacco Products* (Apr. 24, 2018),  
 27 <https://www.fda.gov/media/112339/download>.

28 <sup>187</sup> Letter from U.S. Food & Drug Admin. to Kevin Burns, CEO of Juul Labs, Inc. (Sept. 9, 2019),  
<https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/juul-labs-inc-590950-09092019>.

<sup>188</sup> INREJUUL\_00121627 (preliminary slides); INREJUUL\_00124965 (data).

182. The first study, carried out by McKinsey & Company, generated over 1,000 responses from teens aged 13 to 17 years old.<sup>189</sup> The second study, conducted by DB Research, appears to have gathered data from a focus group of 16 kids in Bethesda, Maryland, and Baltimore, Maryland.<sup>190</sup>

183. Both studies found that teens' co-favorite JUUL flavors were mango and mint, and that teens found only one third-party flavor more desirable than mango and mint: "Cotton Candy" (McKinsey)<sup>191</sup> and "Fruit Loops" (DB Research).<sup>192</sup>

184. Though the McKinsey study did not survey teens' preference for menthol, the DB Research study did and found that while 28% of teens found menthol appealing, 72% of teens liked mint.<sup>193</sup>

185. In other words, these surveys showed that teens respond to mint the way they respond to their favorite candy flavors and respond to Menthol the way they respond to traditional tobacco flavors typically disfavored by youth. This is unsurprising, as the "Mint" flavor was designed not to taste like a Menthol cigarette. Users have described JLI's Menthol flavor as "tast[ing] like a [N]ewport" cigarette that "doesn't have that good peppermint taste like [C]ool [M]int."<sup>194</sup>

186. Because of these and other studies, JLI, the Management Defendants, and the Altria Defendants knew that mint is an attractive flavor for kids. According to Siddharth Breja, who was senior vice president for global finance at JLI, after JLI pulled most flavored pods, including mango, from the market in a purported attempt to reduce youth usage of JUUL, then-CEO Kevin Burns said

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<sup>189</sup> *Id.*

<sup>190</sup> INREJUUL\_00035325.

<sup>191</sup> INREJUUL\_00124965.

<sup>192</sup> *Id.*

<sup>193</sup> INREJUUL\_00035325.

<sup>194</sup> Reddit, *How does Classic Menthol Compare to Cool Mint*, [https://www.reddit.com/r/juul/comments/7wo39m/how\\_does\\_classic\\_menthol\\_compare\\_to\\_cool\\_mint/](https://www.reddit.com/r/juul/comments/7wo39m/how_does_classic_menthol_compare_to_cool_mint/).

1 that “[y]ou need to have an IQ of 5 to know that when customers don’t find mango they buy mint.”<sup>195</sup>

2 And it was public knowledge that mint and menthol have a well-documented history of facilitating  
3 youth tobacco use, as Dr. Jonathan Winickoff testified before Congress:

4 [it is] completely false to suggest that mint is not an attractive flavor to children. From  
5 candy canes to toothpaste, children are introduced to mint flavor from a young age. Not  
6 only do children enjoy mint, but it has special properties that make it an especially  
7 dangerous flavor for tobacco. Menthol’s anesthetic properties cool the throat, mask the  
8 harshness of nicotine, and make it easier for children to start using and continue using  
tobacco products. The impact of mint and menthol flavors on increasing youth tobacco  
addiction is well documented.<sup>196</sup>

9  
10 187. If the purpose of these youth prevention studies was to “better understand how different  
11 flavor profiles appeal to different age groups to inform youth prevention,” as the McKinsey slides  
12 presenting that study’s findings indicate, the lesson for JLI, the Management Defendants, and the  
13 Altria Defendants was that teens like mint as much or more than any other JUUL flavor, including  
14 mango, fruit medley, crème brulee, cucumber, and more than a dozen other candy-like flavors  
15 produced by third-parties for use with the JUUL device.

16  
17 188. With that knowledge and with no genuine interest in youth prevention, and as detailed  
18 below, JLI, the Management Defendants, and Altria committed to work to preserve mint as a flavor for  
19 as long as possible. Indeed, to further this goal, Defendants Pritzker and Valani poured additional  
20 money into JLI a mere two months later as part of a \$600 million funding round.<sup>197</sup>

21  
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23 <sup>195</sup> Sheila Kaplan and Jan Hoffman, *Juul Knowingly Sold Tainted Nicotine Pods, Former Executive*  
Say, N.Y. TIMES (Nov. 20, 2019), <https://www.nytimes.com/2019/10/30/health/juul-pods-contaminated.html>.

24 <sup>196</sup> *Examining Juul’s Role in the Youth Nicotine Epidemic, Hearing Before the H. Comm. on Oversight*  
25 *and Reform, Subcomm. on Econ. and Consumer Policy*, 116th Cong. 3 (2019) (statement of Jonathan  
26 P. Winickoff, American Academy of Pediatrics),  
<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.07.24%20Winickoff%20AAP%20Testimony.pdf>.

27 <sup>197</sup> Alex Wilhelm & Jason D. Rowley, *JUUL Raises \$650M Of Its \$1.25B Mega-Round*, CRUNCHBASE  
28 (Jul. 10, 2018), <https://news.crunchbase.com/news/juul-raises-650m-of-its-1-25b-mega-round/>.

189. By keeping mint on the market long after other flavors were pulled, these Defendants continued to expand the number of addicted e-cigarette users.

**D. Defendants Developed and Implemented a Marketing Scheme to Mislead Users into Believing that JUUL Products Contained Less Nicotine Than They Actually Do and Were Healthy and Safe.**

190. Having created a product designed to hook users to its nicotine, JLI had to mislead users into believing JUUL was something other than what it actually was. So, the company engaged in a years' long campaign to downplay JUUL's nicotine content, nicotine delivery, and the unprecedented risks of abuse and addiction JUUL poses. Defendants devised and knowingly carried out a material scheme to defraud and addict users by (a) misrepresenting the nicotine content, nicotine delivery profile, and risks of JUUL products, (b) representing to the public that JUUL was a smoking cessation tool, and (c) using third-party groups to spread false and misleading narratives about e-cigarettes, and JUUL in particular.

**1. The Defendants Knowingly Made False and Misleading Statements and Omissions Concerning JUUL's Nicotine Content.**

191. As part of their strategy to market to youth and nonsmokers, JLI and the Management Defendants also did not effectively inform users that JUUL products contain nicotine. Despite making numerous revisions to JUUL products' packaging since 2015, JLI did not include nicotine warnings until forced to do so in August 2018.<sup>198</sup>

192. Moreover, many of JUUL's advertisements, particularly prior to November 2017, also did not mention that JUUL contained nicotine. In the first year after JUUL's launch, not one of JLI's

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<sup>198</sup> See INREJUUL\_00444332 (2015 image of JLI packaging). The JLI packaging originally included such warnings about nicotine, but were removed during various rounds of revisions, *see e.g.*, INREJUUL\_00021583-586 at 583 (2014 image of JLI packaging containing handwritten revisions of the original language).

171 promotional emails said anything about the nicotine content in JUUL products.<sup>199</sup> For example, in a July 11, 2015 email, JLI advertised its promotional events with the text, “Music, Art, & JUUL. What could be better? Stop by and be gifted a free starter kit.”<sup>200</sup> This email did not mention that JUULpods contain nicotine, nor did it say that JUUL or the free starter kits were intended for adults only.

193. Similarly, none of JLI’s 2,691 tweets between June 2015 and October 6, 2017 mentioned that JUUL contained nicotine.<sup>201</sup> For example:

- A. On August 7, 2015, JLI tweeted, “Need tix for @cinespia 8/15? We got you. Follow us and tweet #JUULallnight and our faves will get a pair of tix!”<sup>202</sup> This tweet did not mention that JUUL contained nicotine.
- B. On July 28, 2017, JLI tweeted an image of a Mango JUULpod next to mangos captioned “#ICYMI: Mango is now in Auto-ship! Get the #JUULpod flavor you love delivered & save 15%. Sign up today.”<sup>203</sup> This tweet did not mention that JUUL contained nicotine.
- C. On August 4, 2017, JLI tweeted “Beat The August Heat with Cool Mint” and “Crisp peppermint flavor with a pleasant aftertaste,” captioned “A new month means you can stock up on as many as 15 #JUULpod packs. Shop now.”<sup>204</sup> This tweet did not mention that JUUL contained nicotine.
- D. On August 28, 2017, JLI tweeted “Do you brulée? RT [re-tweet] if you enjoy dessert without the spoon with our Creme Brulee #JUULpods.”<sup>205</sup> This tweet did not mention that JUUL contained nicotine.

<sup>199</sup> Robert K. Jackler et al., *JUUL Advertising Over Its First Three Years on the Market*, Stanford Research Into the Impact of Tobacco Advertising 25 (Jan. 31, 2019), [http://tobacco.stanford.edu/tobacco\\_main/publications/JUUL\\_Marketing\\_Stanford.pdf](http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf).

<sup>200</sup> *Check out our JUUL events this Summer*, JUUL (hello@juulvapor.com) (July 11, 2015), [http://tobacco.stanford.edu/tobacco\\_web/images/pod/juul/email/large/email\\_2.jpg](http://tobacco.stanford.edu/tobacco_web/images/pod/juul/email/large/email_2.jpg).

<sup>201</sup> Robert K. Jackler et al., *JUUL Advertising Over Its First Three Years on the Market*, Stanford Research Into the Impact of Tobacco Advertising 25 (Jan. 31, 2019), [http://tobacco.stanford.edu/tobacco\\_main/publications/JUUL\\_Marketing\\_Stanford.pdf](http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf).

<sup>202</sup> JUUL Labs, Inc. (@JUULvapor), Twitter (Aug. 7, 2015), [http://tobacco.stanford.edu/tobacco\\_web/images/pod/juul/twitter/large/twitter\\_18.jpg](http://tobacco.stanford.edu/tobacco_web/images/pod/juul/twitter/large/twitter_18.jpg).

<sup>203</sup> JUUL Labs, Inc. (@JUULvapor), Twitter (July 28, 2017), [http://tobacco.stanford.edu/tobacco\\_web/images/pod/juul/twitter/large/twitter\\_38.jpg](http://tobacco.stanford.edu/tobacco_web/images/pod/juul/twitter/large/twitter_38.jpg).

<sup>204</sup> JUUL Labs, Inc. (@JUULvapor), Twitter (Aug. 4, 2017), [http://tobacco.stanford.edu/tobacco\\_web/images/pod/juul/twitter/large/twitter\\_39.jpg](http://tobacco.stanford.edu/tobacco_web/images/pod/juul/twitter/large/twitter_39.jpg).

<sup>205</sup> Kathleen Chaykowski, *The Disturbing Focus of Juul’s Early Marketing Campaigns*, Forbes (Nov. 16, 2018), <https://www.forbes.com/sites/kathleenchaykowski/2018/11/16/the-disturbing-focus-of-juuls-early-marketing-campaigns/#3da1e11b14f9>.

1           194. Even after Defendants added a nicotine warning to JUUL products, they continued to  
 2 mislead youth and the public about the amount of nicotine in a JUULpod. Every 5% strength JUUL  
 3 pod package represents that one pod is equivalent to one pack of cigarettes. This statement is  
 4 deceptive, false and misleading. As JLI's regulatory head explained internally to former CEO Kevin  
 5 Burns in 2018, each JUUL pod contains "roughly *twice the nicotine content* of a pack of cigarettes."<sup>206</sup>  
 6

7           195. In addition, and as JLI and the Management Defendants know, it is not just the amount  
 8 of nicotine, but the efficiency with which the product delivers nicotine into the bloodstream, that  
 9 determines the product's narcotic effect, risk of addiction, and therapeutic use. Most domestic  
 10 cigarettes contain 10–15 mg of nicotine per cigarette<sup>207</sup> and each cigarette yields between 1.0 to 1.4 mg  
 11 of nicotine,<sup>208</sup> meaning that around 10% of the nicotine in a cigarette is typically delivered to the user.  
 12 JUUL e-cigarettes, on the other hand, have been found to deliver at least 82% of the nicotine contained  
 13 in a JUUL pod to the user.<sup>209</sup> JLI's own internal studies suggest a nicotine transfer efficiency rate of  
 14 closer to 100%.<sup>210</sup>  
 15

16           196. Defendants also knew that the use of benzoic acid and nicotine salts in JUUL pods  
 17 affects pH and facilitates "absorption of nicotine across biological membranes."<sup>211</sup> JUUL's e-liquid  
 18 formulation is highly addictive not only because it contains a high concentration of nicotine, but  
 19

20 <sup>206</sup> INREJUUL\_00279931.

21 <sup>207</sup> Neal L Benowitz & Jack E Henningfield, *Reducing the Nicotine Content to Make Cigarettes less*  
 22 *addictive*, 22 TOBACCO CONTROL Supp. 1, i14-17 (2013),  
 23 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3632983/>.

24 <sup>208</sup> Lynn T. Kozlowski & Janine L. Pilliteri, *Compensation for Nicotine by Smokers of Lower Yield*  
 25 *Cigarettes*, 7 SMOKING AND TOBACCO CONTROL MONOGRAPH 161, 164  
 26 (1983), [https://cancercontrol.cancer.gov/brp/tcrb/monographs/7/m7\\_12.pdf](https://cancercontrol.cancer.gov/brp/tcrb/monographs/7/m7_12.pdf)

27 <sup>209</sup> Samantha M. Reilly et al., *Free Radical, Carbonyl, and Nicotine Levels Produced by JUUL*  
 28 *Electronic Cigarettes*, 21 NICOTINE TOBACCO RESEARCH 1274 (2019),  
<https://www.ncbi.nlm.nih.gov/pubmed/30346584> (about 82%, for averages of 164 µg per puff).

<sup>210</sup> See, e.g., INREJUUL\_00023597 (finding 94% nicotine transfer efficiency with 4% benzoate formula).

<sup>211</sup> Neal L. Benowitz et al., *Nicotine Chemistry, Metabolism, Kinetics and Biomarkers*, 192  
 HANDB.EXP.PHARMACOL. 29(2010), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2953858/>



1 because it contains a particularly potent form of nicotine, i.e., nicotine salts. Defendants knew this, as  
2 Adam Bowen advised the Board of Directors at an October 2015 Board meeting on JLI's "nicotine  
3 salts patent application."<sup>212</sup> And the Altria Defendants were aware of the research showing the potency  
4 of nicotine salts from their many years in the tobacco business.

5  
6 197. JLI and Defendant Bowen, knowing that the Phase 0 results illustrated that the nicotine  
7 content was greater than they wanted to represent, sought to engineer test results that differed from  
8 those results and were more consistent with JLI's deceptive messaging. In May 2014, within weeks of  
9 the Phase 0 study, JLI and Defendant Bowen carried out a second pharmacokinetics study in New  
10 Zealand. This study was called the CH-1401, or the "Phase 1" study. This study again examined the  
11 effects of inhaling aerosol from various 2% nicotine solutions: nicotine benzoate (blend A), nicotine  
12 malate (blend B), and free-base nicotine (blend C).<sup>213</sup> In a further departure from the Phase 0 study,  
13 which used experienced e-cigarette users, the Phase 1 study used subjects that had not previously  
14 ingested aerosolized nicotine vapor, and who had certainly never ingested aerosolized nicotine vapor  
15 from nicotine salts. As Defendants JLI and Bowen knew, this difference is critical. Just as first-time  
16 smokers would not inhale as much cigarette smoke as regular smokers, inexperienced (or "learning")  
17 e-cigarette users will not inhale vapor at a rate that maximizes nicotine delivery.<sup>214</sup> JLI's decision to  
18 omit participants with previous e-cigarette experience from the criteria for inclusion in CH-1401  
19 resulted in artificially deflated Cmax results.<sup>215</sup>  
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26 <sup>212</sup> INREJUUL\_00278408.

27 <sup>213</sup> INREJUUL\_00014159-INREJUUL\_00014226.

28 <sup>214</sup> INREJUUL\_00002526-INREJUUL\_00002625.

<sup>215</sup> *Id.*

198. The Cmax recorded in the Phase 1 study was approximately a third of that achieved by smoking a cigarette. Specifically, e-cigarette users recorded a Cmax of approximately 12.87 ng/ml, compared with the 31.47 ng/ml Cmax resulting from smoking a Pall Mall.<sup>216</sup>

199. In possession of the results from both the Phase 0 and Phase 1 studies, JLI nevertheless decided to launch a 5% nicotine salt solution as its commercial product. An internal memo explained JLI's reasoning as follows: "[s]ince the Cmax of the [2%] nicotine salt was about 1/3 that of cigarettes, we chose a concentration of 5% for our commercial product (JUUL), which should provide a Tmax and Cmax consistent with a cigarette."<sup>217</sup>

200. Instead of testing a 5% solution, JLI *estimated* the Cmax result of a 5% nicotine solution using a model.<sup>218</sup> But the Phase 0 data showed that a 4% benzoic acid / 5% nicotine solution would have a higher Cmax and AUC than those of a cigarette, not one that was equal.

201. JLI and the Management Defendants knew that JLI's studies indicated that their 5% solution product was more potent and more addictive than a typical cigarette. But JLI and the Management Defendants then used their unsupported extrapolation of their flawed studies to market JUUL as providing a nicotine experience on par with a cigarette, even though they designed JUUL to ensure that was not true. In reality, there were never any measured test results in accord with JLI's marketing to distributors, retailers, and the public at large.

202. In the United States, the unsupported extrapolations from what appears to be the Phase 1 study were used to create charts, which JLI posted on its website, shared with journalists, sent to retailers, and distributed to third party promoters, showing that JUUL's 5% solution achieved a pk

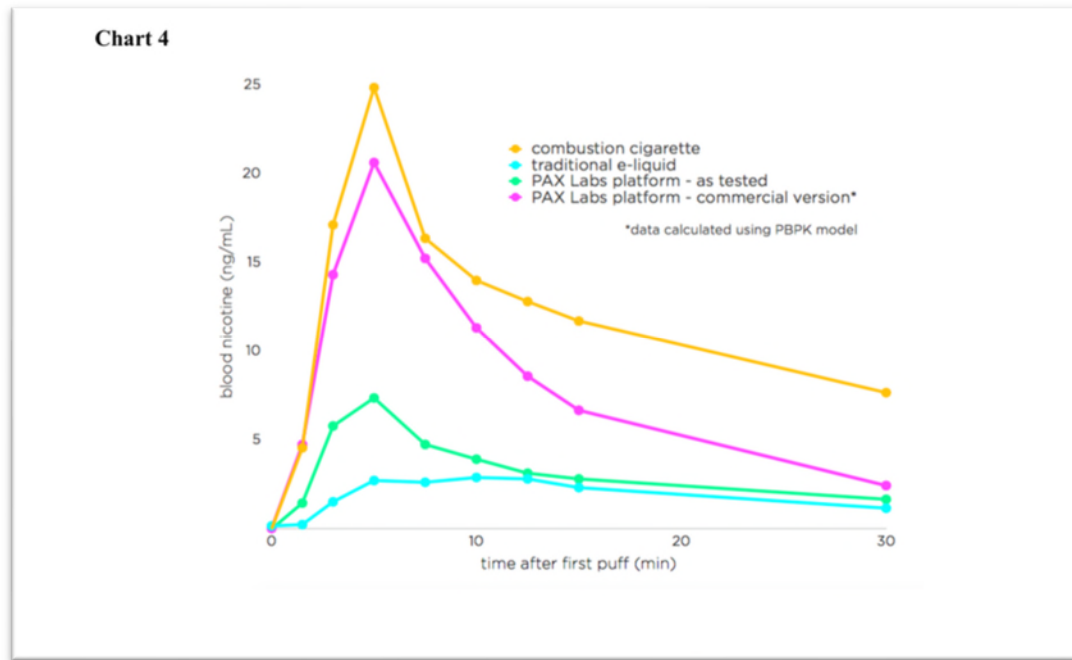
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<sup>216</sup> *Id.*

<sup>217</sup> INREJUUL\_00351717-INREJUUL\_00351719.

<sup>218</sup> *Id.*

profile just below that of a cigarette. For example, the following chart appeared on the online publication TechCrunch:<sup>219</sup>

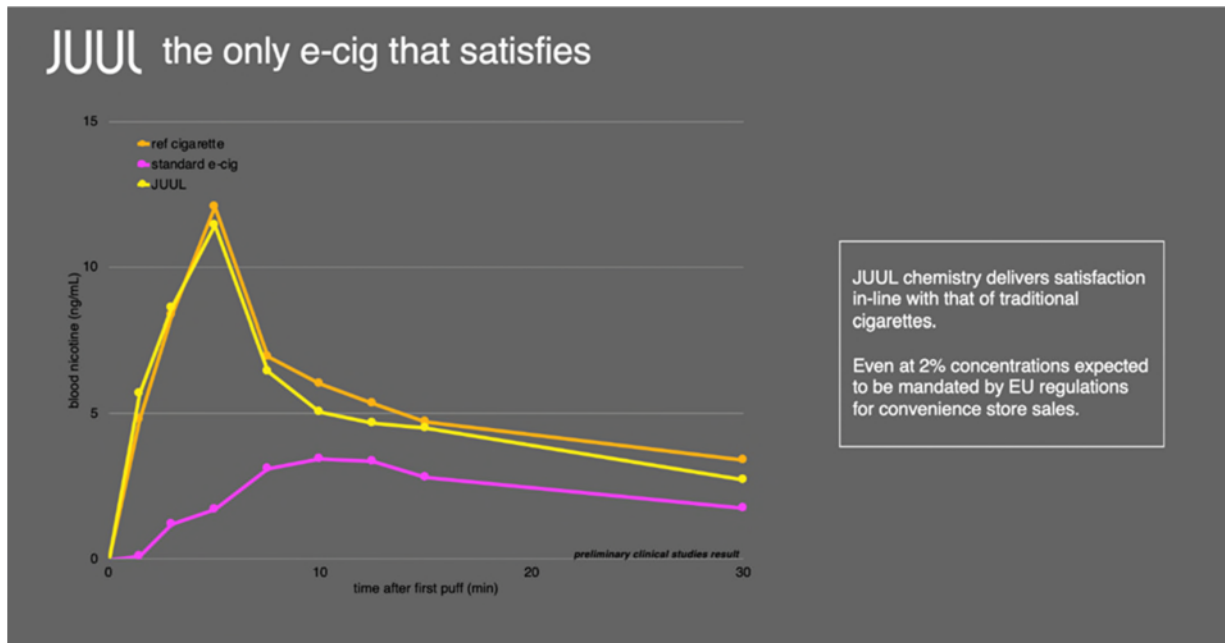


203. Simultaneously, while providing extrapolated data to the public, Phase 1 was used as the basis for representations to retailers that a 2% solution achieved a pk profile equaling that of a cigarette. In a pitch deck dated March 25, 2015, and labeled as being intended for the convenience store distributor Core-Mark, JLI presented interim<sup>220</sup> Phase 1 data showing this equivalence:<sup>221</sup>

<sup>219</sup> Ryan Lawler, *Vaporization Startup Pax Labs Introduces Juul, Its Next-Gen-E-Cigarette*, TECH CRUNCH (Apr. 21, 2015), <https://techcrunch.com/2015/04/21/pax-juul/>.

<sup>220</sup> See JLI00363360.

<sup>221</sup> INREJUUL\_00448896.



204. These misrepresentations to the public were not accidental, nor were they the work of a rogue employee. In a June 2014 Ploom Board meeting in London, the Ploom executives' presentation to the Board, which at that time included Defendants Bowen, Monsees, Pritzker, and Valani, explained the differences between the Phase 0 and Phase 1 results as "due to averaging across more subjects with variability in puffing behavior."<sup>222</sup> Their explanation did not note that "variability in puffing behavior" was partly a result of the fact that participants in the Phase 0 study were experienced e-cigarette users whereas the participants in the Phase 1 study were not. Thus, Defendants Bowen, Monsees, Pritzker, and Valani were privy to both the Phase 0 and Phase 1 results. And they *knew* that the data JLI (then Ploom) was pushing on the public was false and misleading, but none made any efforts to correct or withdraw those false and misleading statements. Aside from submitting the testing protocol and results of the Phase 0 study with the '895 patent, JLI, Bowen, Monsees, Pritzker, and Valani otherwise ignored the Phase 0 study and omitted it from public discussion of JUUL's nicotine delivery.

<sup>222</sup> INREJUUL\_00016443-INREJUUL\_00016507.

**2. JLI, the Management Defendants, and Altria Transmitted, Promoted and Utilized Statements Concerning JUUL's Nicotine Content that They Knew Was False and Misleading.**

205. As set forth above, the statements in JLI advertisements and on JUUL pod packaging that each JUUL pod contains about as much nicotine as a pack of cigarettes are deceptive, false and misleading. Defendants knew this.

206. JLI and the Management Defendants caused deceptive, false and misleading statements that a JUUL pod had an equivalent amount of nicotine as one pack of cigarettes to be distributed via the wires and mails. These Defendants have thus materially misrepresented the nicotine content of JUUL products to the consuming public including Plaintiff, through acts of mail and wire fraud.

207. By no later than October 30, 2016 (and likely earlier), the JLI Website—which, as discussed above, the Management Defendants on JLI's Board of Directors reviewed and approved—advertised that “[e]ach JUULpod contains 0.7mL with 5% nicotine by weight, approximately equivalent to 1 pack of cigarettes or 200 puffs.”<sup>223</sup> The language on the website would later change, but still maintained the same fraudulent misrepresentation—i.e., that “[e]ach 5% JUULpod is roughly equivalent to one pack of cigarettes in nicotine delivery.”<sup>224</sup>

208. As noted above, JLI and the Management Defendants directed and approved the content of the JUUL website, and they also directed and approved the distribution channels for JUUL pods and deceptive, misleading and fraudulent statements regarding JUUL's nicotine content. And although they knew that these statements, which they caused to be transmitted over the wires and mails, were untrue, JLI and the Management Defendants have made no effort to retract such statements or correct their

<sup>223</sup> JUULpod, JUUL Labs, Inc. (Oct. 30, 2016),

<https://web.archive.org/web/20161030085646/https://www.juulvapor.com/shop-pods/>

<sup>224</sup> What is Vaping?, JUUL Labs, Inc. (July 2, 2019), <https://www.JUUL.com/resources/What-is-Vaping-How-to-Vape>

1 lies. Moreover, by no later than July 2018, James Monsees required JLI employees to personally seek  
2 his approval for the artwork on all JUUL and JUUL pod packaging.<sup>225</sup>

3 209. In addition to approving the JLI website, knowing that it contained deceptive,  
4 misleading and false statements, JLI (through its employees) and the Management Defendants also  
5 were directly responsible for the interstate transport, *via* U.S. mail, of JUULpod packaging contained  
6 misrepresentations and omissions. At the same Board Meeting where Defendants Pritzker, Huh, and  
7 Valani were installed as the Executive Committee, the Board directed JLI's management on, among  
8 other things, "the need to rely on distributors and the challenges in reaching customers otherwise."<sup>226</sup>

9 210. JUUL pod packages that were sent *via* U.S. mail stated that a single JUUL pod is  
10 "approximately equivalent to about 1 pack of cigarettes."<sup>227</sup> These statements, as well as the statements  
11 on the JLI website, are false and misleading.  
12

13 211. The statement on the JLI website, and in its advertisements and packaging, that each  
14 JUUL pod contains 5% nicotine and is approximately equivalent to a pack of cigarettes is false and  
15 likely to deceive and mislead, because the actual amount of nicotine contained in a JUUL pod is as  
16 much as twice as high as that in a pack of cigarettes.  
17

18 212. AGDC and Altria Client Services greatly expanded the reach of this fraud by providing  
19 their retail and distribution might for JLI products, causing millions of JUUL pods to be sent via U.S.  
20 mail with packaging stating that JUUL pods contain only 5% nicotine by weight and are  
21 "approximately equivalent to about 1 pack of cigarettes."<sup>228</sup> JLI, the Management Defendants, and the  
22

23  
24  
25 <sup>225</sup> JLI10045538

26 <sup>226</sup> INREJUUL\_00278408.

27 <sup>227</sup> Juul Labs, Inc., Twitter, (Feb. 14, 2018),

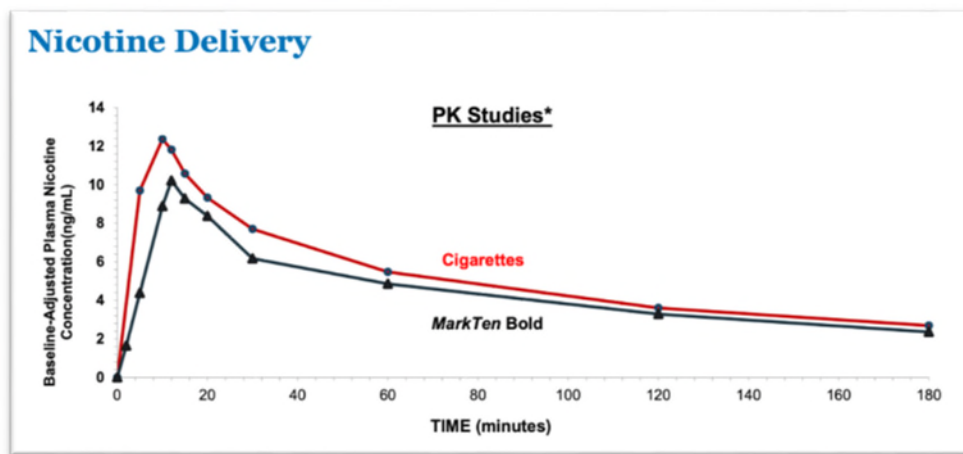
<https://twitter.com/JUULvapor/status/963844069519773698>,

28 <sup>228</sup> *Id.*

Altria Defendants knew that these statements were false and misleading, but nevertheless utilized JUUL product packing, marketing and advertising to maintain their fraud.

213. The Altria Defendants knew in 2017 that a JUUL pod delivered more nicotine than one pack of cigarettes. In 2017, Altria, through its wholly owned subsidiary Nu Mark, launched its MarkTen Bold e-cigarette, a relatively high-strength 4% formulation compared to the 2.5% and 3.5% strength MarkTen products initially offered. Even though JUUL was already on store shelves and was rapidly gaining market share with its 5% nicotine formulation, Altria (through Nu Mark) chose to bring a less potent 4% formulation to market.

214. According to Altria's own pharmacokinetic testing (likely conducted by Altria Client Services) as reflected in the chart below, this 4% less potent formulation was nevertheless sufficient to raise plasma nicotine to levels approaching those generated by combustible cigarettes. In other words, the Altria Defendants' own pharmacokinetic testing suggested the highly addictive nature of a 5% formulation, as such a formulation would readily equal or exceed the nicotine delivery profile of a combustible cigarette.



**Figure 1: Presented at Altria Group Inc.'s November 1, 2017 Investor Day Presentation. MarkTen Bold 4%**



215. Based on its own internal knowledge, the Altria Defendants knew that a 5% nicotine formulation would carry more nicotine than one pack of cigarettes. In addition to data Altria and Altria Client Services received from JLI, their due diligence undoubtedly included a careful examination of JLI's intellectual property, including the '895 patent, which provides a detailed overview of nicotine benzoate's pharmacokinetic profile.

216. Thus, JLI, the Management Defendants, and the Altria Defendants knew that the statement on JUUL pod packaging that each JUUL pod contains 5% nicotine and about as much nicotine as a pack of cigarettes is literally false and they intended such statements to mislead. Neither the Altria Defendants nor JLI or the Management Defendants have made any effort to correct or retract the false and misleading statements as to the true nicotine content in JUUL pods. Instead, they have continued to misrepresent the product's nicotine content and design, with the goal of misleading and deceiving users.

217. From JUUL's pre-release announcements to this day, JLI has continuously represented that each pod is approximately equivalent to a pack of cigarettes. These claims, which JLI repeats widely in advertisements, press releases, and its web site, have been distributed *via* the wires and mails and disseminated by reputable and widely reliable sources that accepted those representations as true.<sup>229</sup>

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<sup>229</sup> See Truth Initiative, *6 Important Facts about Juul*, <https://truthinitiative.org/research-resources/emerging-tobacco-products/6-important-facts-about-juul>; Erin Brodwin, *An E-cigarette with Twice the Nicotine of Comparable Devices is Taking over High Schools – and Scientists are Sounding the Alarm*, BUSINESS INSIDER (Apr. 30, 2018), <https://www.businessinsider.com/juul-e-cig-vaping-health-effects-2018-3>; Caroline Kee, *Everything you Need to Know About the JUUL, Including the Health Effects*, BUZZFEED NEWS (Feb. 5, 2018), <https://www.buzzfeednews.com/article/carolinekee/juul-ecigarette-vape-health-effects>; Jan Hoffman, *The Price of Cool: A Teenager, a Juul and Nicotine Addiction*, NEW YORK TIMES, (November 16, 2018), <https://www.nytimes.com/2018/11/16/health/vaping-juul-teens-addiction-nicotine.html>; Sarah Milov, *Like the Tobacco Industry, E-cigarette Manufacturers are Targeting Children*, THE WASHINGTON POST, (Sept. 23, 2018) <https://www.washingtonpost.com/outlook/2018/09/23/like-tobacco-industry-e-cigarette-manufacturers-are-targeting-children/>; Washington State Dep't of

1           218. Not only have JLI and the Management Defendants misrepresented or concealed the  
 2 actual amount of nicotine consumed *via* JUUL pods, but they also did not effectively or fully inform  
 3 users about the risks associated with the potent dose of nicotine delivered by JLI’s products. Despite  
 4 going through numerous revisions since 2015, the JUUL packaging did not include nicotine addiction  
 5 warnings until JLI was forced to add them in August 2018. The original JUUL product labels had a  
 6 California Proposition 65 warning indicating that the product contains a substance known to cause  
 7 cancer, and a warning to keep JUUL pods away from children and pets, but contained no warnings  
 8 specifically about the known effects, or unknown long-term effects, of nicotine or consuming e-  
 9 cigarettes/inhaling nicotine salts.<sup>230</sup>

11           219. Moreover, the form of nicotine JUUL pods contain is particularly potent. JUUL’s use of  
 12 “strength” to indicate concentration by weight is also at odds with the industry standard of reporting  
 13 concentration by volume,<sup>231</sup> leading users to believe it contains less nicotine than other formulations  
 14 advertised as 6% nicotine, when JUUL pods in fact contain approximately the same nicotine as a  
 15 solution that is 6% nicotine by volume.

17           220. The “5% strength” statement in Defendants’ advertisements misrepresents the most  
 18 material feature of the JUUL product—the nicotine content—and has misled users to their detriment.

23           Health, *What are Vapor Products?*,

24           <https://www.doh.wa.gov/YouandYourFamily/Tobacco/VaporProducts>.

25           <sup>230</sup> See INREJUUL\_00444332 (2015 image of JLI packaging). Note that JLI packaging originally  
 26 included such warnings about nicotine, but were apparently removed during various rounds of revisions,  
 27 see e.g. INREJUUL\_00021583 (2014 image of JLI packaging containing handwritten revisions of the  
 28 original language.).

29           <sup>231</sup> See, e.g., American E-Liquids Manufacturing Standards Association, *E-Liquids Manufacturing*  
 30           *Standards*, § 1.05 (2017), [https://www.aemsa.org/wp-content/uploads/2017/03/AEMSA-Standards-](https://www.aemsa.org/wp-content/uploads/2017/03/AEMSA-Standards-v2.3.3.pdf)  
 31           v2.3.3.pdf, (quantifying e-liquid nicotine content in terms of volume).

1 Resellers, apparently assuming that “5% strength” means “50mg/ml” nicotine by volume, compound  
 2 confusion among users by stating that JUUL pods contain “50 mg/ml,” which they do not.<sup>232</sup>

3 221. If JLI and the Management Defendants did not know when JLI released JUUL pods that  
 4 the “5% strength” representation in Defendants’ advertisements was misleading, they learned that there  
 5 was widespread confusion about the JUUL pods’ nicotine content. By 2017, studies revealed that  
 6 smokers did not understand “5% strength,” and some understood that phrase to mean 5% of a cigarette.  
 7 Though this was identified as a “pain point” for new users,<sup>233</sup> JLI and the Management Defendants  
 8 (and later the Altria Defendants) did nothing to stop or correct this confusion about the nicotine  
 9 content.  
 10

11 222. The “5% strength” statement in Defendants’ advertisements is also misleading. At least  
 12 two independent studies testing multiple varieties of JUUL pods have likewise found significantly  
 13 higher concentrations of nicotine than the 59 mg/mL JUUL’s website represents, suggesting that the  
 14 difference in the total nicotine content of a JUUL pod vs. a pack of combustible cigarettes could be  
 15 even greater.<sup>234</sup>  
 16  
 17  
 18

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19 <sup>232</sup> See, e.g. Tracy Vapors, Starter Kit,  
 20 <http://web.archive.org/web/20190422143424/https://www.tracyvapors.com/collections/starter-kit>;  
 21 Lindsey Fox, *JUUL Vapor Review, E-cigarette Reviewed*, (Mar. 20, 2017),  
 22 <https://ecigaretterevuewed.com/juul-review> (“The nicotine content of the JUUL pods is always the  
 23 same: 5% or 50 mg/ml”); Jason Artman, *JUUL E-Cigarette Review*, eCig One (Oct. 26, 2016)  
 24 <https://ecigone.com/e-cigarette-reviews/juul-e-cigarette-review/> (“the e-liquid contains 50 mg of  
 25 nicotine per ml of e-liquid”); West Coast Vape Supply, Juul Starter Kit (July 18, 2019),  
 26 [http://web.archive.org/web/20190718190102/https://westcoastvapesupply.com/products/juul-starter-](http://web.archive.org/web/20190718190102/https://westcoastvapesupply.com/products/juul-starter-kit)  
 27 [kit](http://web.archive.org/web/20190718190102/https://westcoastvapesupply.com/products/juul-starter-kit) (“5% . . . 50 mg”); Vapor4Life, *How Much Nicotine is In a JUUL?* (Aug. 24, 2018),  
 28 <https://www.vapor4life.com/blog/how-much-nicotine-is-in-a-JUUL/>. “Each official JUUL pod  
 contains a whopping 50mg of nicotine per milliliter of liquid (most other devices range from 3 to  
 30mg per milliliter.”

<sup>233</sup> INREJUUL\_00123540.

<sup>234</sup> See J.F. Pankow et al., *Benzene Formation in Electronic Cigarettes*, 12 PLoS ONE 1 (2017); See  
 also Anna K. Duell, et al., *Free-Base Nicotine Determination in Electronic Cigarette Liquids by 1H*  
*NMR Spectroscopy*, 31 CHEM. RES. TOXICOL. 431, 431-34 (2018).

**3. Defendants Used Food and Coffee Themes to Give False Impression that JUUL Products Were Safe and Healthy.**

223. In late 2015, JLI and the Management Defendants employed a deceptive marketing scheme to downplay the harms of e-cigarettes with a food-based advertising campaign called “Save Room for JUUL.” The campaign framed JUUL’s addictive pods as “flavors” to be paired with foods.<sup>235</sup> JLI described its Crème Brûlée nicotine pods as “the perfect evening treat” that would allow users to “indulge in dessert without the spoon.”<sup>236</sup> In one 2016 email, JLI bluntly suggested that users satisfy their sugar cravings with JUUL’s highly-addictive nicotine vapor: “Have a sweet tooth? Try Brulee.”<sup>237</sup> JLI similarly promoted the fruit medley pods using images of ripe berries.<sup>238</sup> JLI described its “Cool” Mint pods as having a “crisp peppermint taste with a pleasant aftertaste” and encouraged users to “Beat The August Heat With Cool Mint.”<sup>239</sup>

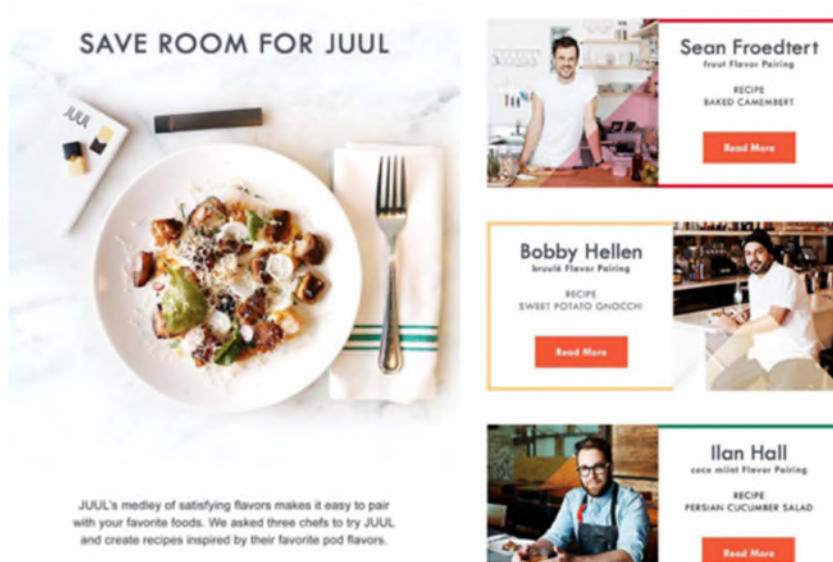
<sup>235</sup> Erin Brodwin, *\$15 Billion Startup JUUL Used ‘Relaxation, Freedom, and Sex Appeal’ to Market its Crème-brulee-flavored E-cigs on Twitter and Instagram—but its Success has Come at a Big Cost*, BUSINESS INSIDER (Oct. 26, 2018), <https://www.businessinsider.com/juul-e-cig-marketing-youtube-twitter-instagram-social-media-advertising-study-2018-10>.

<sup>236</sup> Stanford University, *Research into the Impact of Tobacco Advertising*, [http://tobacco.stanford.edu/tobacco\\_main/images\\_pods.php?token2=fm\\_pods\\_st658.php&token1=fm\\_pods\\_img36019.php&theme\\_file=fm\\_pods\\_mt068.php&theme\\_name=JUUL&subtheme\\_name=Flavors](http://tobacco.stanford.edu/tobacco_main/images_pods.php?token2=fm_pods_st658.php&token1=fm_pods_img36019.php&theme_file=fm_pods_mt068.php&theme_name=JUUL&subtheme_name=Flavors)

<sup>237</sup> Stanford University, *Research into the Impact of Tobacco Advertising*, [http://tobacco.stanford.edu/tobacco\\_main/images\\_pods.php?token2=fm\\_pods\\_st658.php&token1=fm\\_pods\\_img36019.php&theme\\_file=fm\\_pods\\_mt068.php&theme\\_name=JUUL&subtheme\\_name=Flavors](http://tobacco.stanford.edu/tobacco_main/images_pods.php?token2=fm_pods_st658.php&token1=fm_pods_img36019.php&theme_file=fm_pods_mt068.php&theme_name=JUUL&subtheme_name=Flavors)

<sup>238</sup> Stanford University, *Research into the Impact of Tobacco Advertising*, [http://tobacco.stanford.edu/tobacco\\_web/images/pod/juul/flavors/large/flavor\\_6.jpg](http://tobacco.stanford.edu/tobacco_web/images/pod/juul/flavors/large/flavor_6.jpg).

<sup>239</sup> Stanford University, *Research into the Impact of Tobacco Advertising*, [http://tobacco.stanford.edu/tobacco\\_main/images\\_pods.php?token2=fm\\_pods\\_st658.php&token1=fm\\_pods\\_img36019.php&theme\\_file=fm\\_pods\\_mt068.php&theme\\_name=JUUL&subtheme\\_name=Flavors](http://tobacco.stanford.edu/tobacco_main/images_pods.php?token2=fm_pods_st658.php&token1=fm_pods_img36019.php&theme_file=fm_pods_mt068.php&theme_name=JUUL&subtheme_name=Flavors)



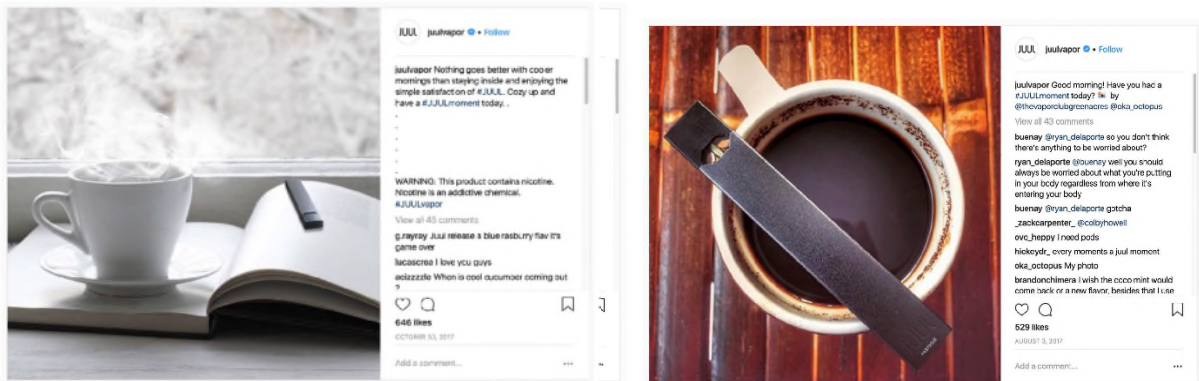
JUUL @JUULvapor · 28 Aug 2017  
Do you brûlée? RT if you enjoy dessert without the spoon with our Creme Brûlée  
#JUULpods bit.ly/2wvDk38



224. Again, none of these advertisements disclosed that JUUL was addictive and unsafe.

225. In several caffeine-pairing advertisements, JUUL devices or pods sit next to coffee and other caffeinated drinks, sometimes with what appear to be textbooks in the picture.<sup>240</sup> JLI's coffee-based advertisements suggest that JUUL should be part of a comfortable routine, like a cup of coffee.

226. JLI's reference to coffee is no mere marketing gimmick, it reflects the larger effort to mislead customers into believing that JUUL is no more harmful than coffee, reinforcing the false and dangerous concept that if a substance is "not harmful," then addiction to that substance cannot be harmful.



227. Defendants knew that tying JUUL to caffeine and food would mislead their target audience—youth and non-smokers—into believing that JUUL was a healthy, safe treat.

#### 4. JLI's "Make the Switch" Campaign Intentionally Misled and Deceived Users to Believe that JUUL Is a Cessation Device.

228. JLI, the Altria Defendants, and the Management Defendants recognized that one of the keys to growing and preserving the number of nicotine-addicted e-cigarette users (and thus JLI's staggering market share), was to mislead potential customers about the true nature of JUUL products. Defendants knew that if it became public that JUUL was designed as a way to introduce nicotine to youth and otherwise hook new users with its potent nicotine content and delivery, it would not survive the public and regulatory backlash. Therefore, JLI (with the knowledge and support of the

<sup>240</sup> *Id.*



1 Management Defendants) and the Altria Defendants repeatedly made false and misleading statements  
 2 to the public that JUUL was created and designed as a smoking cessation device, and falsely and  
 3 misleadingly used the mails and wires to spread the subterfuge. JLI, the Management Defendants, and  
 4 the Altria Defendants committed these deceptive, misleading and fraudulent acts intentionally and  
 5 knowingly. In making these representations, JLI, the Management Defendants, and the Altria  
 6 Defendants intended that users, the public, and regulators rely on misrepresentations that JUUL  
 7 products were designed to assist smoking cessation.  
 8

9 229. The most blatant evidence of the cover-up scheme was the January 2019, \$10 million  
 10 “*Make the Switch*” television advertising campaign. This campaign, which was a continuation of JLI’s  
 11 web-based Switch campaign, was announced less than a month after the Altria Defendants announced  
 12 Altria’s investment in JLI.  
 13

14 230. The “*Make the Switch*” television ads featured former smokers aged 37 to 54 discussing  
 15 “how JUUL helped them quit smoking.”<sup>241</sup> According to JLI’s Vice President of Marketing, the “*Make*  
 16 *the Switch*” campaign was “an honest, straight down the middle of the fairway, very clear  
 17 communication about what we’re trying to do as a company.”<sup>242</sup> These statements were false as JUUL  
 18 was not intended to be a smoking cessation device. JLI and the Management Defendants committed  
 19 acts of wire fraud when they caused the “*Make the Switch*” campaign to air on television with the  
 20 fraudulent intent of deceiving and misleading the public, the United States Congress, and government  
 21 regulators into believing that JLI is and had been focused solely on targeting adult smokers. The Altria  
 22 Defendants also committed acts of mail fraud when they caused tens of thousands, if not millions, of  
 23  
 24  
 25

26 <sup>241</sup> Angelica LaVito, *JLI Combats Criticism with New TV Ad Campaign Featuring Adult Smokers Who*  
 27 *Quit after Switching to E-cigarettes*, CNBC (Jan. 8, 2019), [https://www.cnbc.com/2019/01/07/juul-](https://www.cnbc.com/2019/01/07/juul-highlights-smokers-switching-to-e-cigarettes-in-ad-campaign.html)  
 highlights-smokers-switching-to-e-cigarettes-in-ad-campaign.html.

28 <sup>242</sup> *Id.*



1 written versions of the *Make the Switch* campaign to be distributed with packages of Altria's  
 2 combustible cigarettes.

3 231. The "*Make the Switch*" campaign was fraudulent and was made to protect, maintain,  
 4 and expand the tremendous market share gained by lying to users and hooking youth on nicotine by  
 5 convincing regulators and the public that JUUL was actually a cessation device and JLI's marketing  
 6 was never aimed at youth.  
 7

8 232. Defendants continually and intentionally sought to frame JUUL products as smoking  
 9 cessation devices in their public statements and on their website as part of their scheme to mislead and  
 10 defraud the public. Defendant Monsees explained during his testimony before Congress:

11 ***The history of cessation products have extremely low efficacy. That is the problem we***  
 12 ***are trying to solve here.*** So, if we can give consumers an alternative and market it right  
 13 next to other cigarettes, then we can actually make something work.

14 [T]raditional nicotine replacement therapies, which are generally regarded as the gold  
 15 standard for tools, right, for quitting, those are nicotine in a patch or a gum form, typically,  
 16 and the efficacy rates on those hover just below about a 10 percent or so. JUUL—we ran a  
 17 very large study of JUUL consumers, ex-smokers who had picked up JUUL, and looked  
 18 at them, looked at their usage on a longitudinal basis, which is usually the way that we  
 19 want to look at this, in a sophisticated fashion ... what we found was that after 90 days,  
 54 percent of those smokers had stopped smoking completely, for a minimum of 30 days  
 already. And the most interesting part of this study is that if you follow it out further, to  
 180 days, that number continues to go up dramatically, and that is quite the opposite of  
 what happens with traditional nicotine replacement therapies.<sup>243</sup>

20 233. In response to a direct question about whether people buy JUUL to stop smoking,  
 21 Defendant Monsees responded: "Yes. I would say nearly everyone uses our product as an alternative to  
 22 traditional tobacco products."<sup>244</sup>  
 23

24  
 25 <sup>243</sup> *Examining Juul's Role in the Youth Nicotine Epidemic, Hearing Before the H. Comm. on Oversight*  
 26 *and Reform, Subcomm. on Econ. and Consumer Policy*, 116th Cong. (2019) (statement of James  
 27 Monsees, Co-Founder, JUUL Labs, Inc.),  
[https://oversight.house.gov/legislation/hearings/examining-juul-s-role-in-the-youth-nicotine-](https://oversight.house.gov/legislation/hearings/examining-juul-s-role-in-the-youth-nicotine-epidemic-part-ii)  
*epidemic-part-ii.*

28 <sup>244</sup> *Id.*

234. Following Defendants Monsees' and Altria's lead, Defendants caused a number of other misleading public statements—suggesting that JUUL would help existing adult smokers even though it delivered more nicotine than cigarettes and was designed to appeal to kids—to be made, including the following:

- “JUUL Labs was founded by former smokers, James and Adam, with the goal of improving the lives of the world’s one billion adult smokers by **eliminating cigarettes**. We envision a world where fewer adults use cigarettes, and **where adults who smoke cigarettes have the tools to reduce or eliminate their consumption entirely**, should they so desire.” (JLI Website, April 2018 (or earlier));<sup>245</sup>
- “JUUL Labs, which exists to **help adult smokers switch** off of combustible cigarettes.” (JLI Website, September 19, 2019); and,<sup>246</sup>
- “To paraphrase Commissioner Gottlieb, **we want to be the offramp for adult smokers** to switch from cigarettes, not an on-ramp for America’s youth to initiate on nicotine.” (JLI Website, November 13, 2018);<sup>247</sup>
- “We are taking significant action to prepare for a future where adult smokers overwhelmingly choose non-combustible products over cigarettes by investing \$12.8 billion in JUUL, **a world leader in switching adult smokers . . .** We have long said that providing adult smokers with superior, satisfying products with the potential to reduce harm is the best way to achieve tobacco harm reduction.” (Altria Website, December 20, 2018);<sup>248</sup>
- “We believe e-vapor products present an **important opportunity to adult smokers to switch from combustible cigarettes**.” (Letter to FDA Commissioner Gottlieb, 10/25/18);<sup>249</sup>
- “We have long said that **providing adult smokers with superior, satisfying products with the potential to reduce harm** is the best way to achieve

<sup>245</sup> *Our Mission*, JUUL Labs, Inc. (2019), <https://www.juul.com/mission-values>.

<sup>246</sup> CONSUMER UPDATE: 9/19, JUUL Labs, Inc. (Sept. 19, 2019), <https://newsroom.juul.com/consumer-update-9-19/>.

<sup>247</sup> JLI Labs Action Plan, JUUL Labs, Inc. (Nov. 13, 2018), <https://newsroom.juul.com/juul-labs-action-plan/> (statement of then-CEO Kevin Burns).

<sup>248</sup> *Altria Makes \$12.8 Billion Minority Investment in JUUL to Accelerate Harm Reduction and Drive Growth*, BUSINESSWIRE (Dec. 20, 2018), <https://www.businesswire.com/news/home/20181220005318/en/Altria-12.8-Billion-Minority-Investment-JUUL-Accelerate>

<sup>249</sup> Letter from Howard A. Willard III, Altria, to Dr. Scott Gottlieb, FDA, at 1-2 (Oct. 25, 2018).

1 tobacco harm reduction. **Through Juul**, we are making the biggest  
 2 investment in our history toward that goal.” (Altria Press Release, Dec. 20,  
 2018);<sup>250</sup>

- 3 • “Through JUUL, we have found a unique opportunity to not only participate  
 4 meaningfully in the e-vapor category but to also **support and even**  
 5 **accelerate transition to noncombustible alternative products by adult**  
 6 **smokers.**” (Altria Earning Call, January 31, 2019);<sup>251</sup> and
- 7 • We expect the **JUUL product features that have driven JUUL’s success**  
 8 **in switching adult smokers in the U.S.** to strongly appeal to international  
 9 adult cigarette smokers. (Altria Earning Call, January 31, 2019).<sup>252</sup>

10 235. Defendants knew that the “switch” messaging they initiated for JUUL was false,  
 11 deceptive and misleading. JUUL does not have FDA approval as a cessation product. The *Switch*  
 12 advertisements reinforced the impression left by the testimony of JLI’s co-founder, clearly linking  
 13 JUUL to cessation and quitting. For example:

24 <sup>250</sup> *Altria Makes \$12.8 Billion Minority Investment in JUUL to Accelerate Harm Reduction and Drive*  
 25 *Growth*, (Dec. 20, 2018), BUSINESS WIRE,  
 26 [https://www.businesswire.com/news/home/20181220005318/en/Altria-12.8-Billion-Minority-](https://www.businesswire.com/news/home/20181220005318/en/Altria-12.8-Billion-Minority-Investment-JUUL-Accelerate)  
 27 [Investment-JUUL-Accelerate.](https://www.businesswire.com/news/home/20181220005318/en/Altria-12.8-Billion-Minority-Investment-JUUL-Accelerate)

28 <sup>251</sup> Altria Group (MO) Q4 2018 Earnings Conference Call Transcript: MO earnings call for the period  
 ending December 31, 2018, (Jan. 31, 2019), [https://www.fool.com/earnings/call-](https://www.fool.com/earnings/call-transcripts/2019/02/01/altria-group-mo-q4-2018-earnings-conference-call-t.aspx)  
[transcripts/2019/02/01/altria-group-mo-q4-2018-earnings-conference-call-t.aspx](https://www.fool.com/earnings/call-transcripts/2019/02/01/altria-group-mo-q4-2018-earnings-conference-call-t.aspx).

<sup>252</sup> *Id.*



236. Representative Rashida Tlaib, upon presenting this ad to Monsees, had the following exchange:

**Rep. Tlaib:** After 30 lines, starting with “quit,” the ad says “switch,” followed by no further mentions of start smoking again. You were a smoker. Does this ad give a smoker hope that there might be a way to quit cigarettes for good?

**Mr. Monsees:** I think the intention of this ad is to make it very clear to consumers that there is an alternative, finally, to combustible cigarettes. I am one of those people.<sup>253</sup>

<sup>253</sup> *Examining Juul’s Role in the Youth Nicotine Epidemic, Hearing Before the H. Comm. on Oversight and Reform, Subcomm. on Econ. and Consumer Policy*, 116th Cong. (2019) (statement of James Monsees, Co-Founder, JUUL Labs, Inc.), <https://www.c-span.org/video/?c4811191/user-clip-wasserman-grothman-tlaib-question-monsees> at 12:33-13:04.

237. Defendants' tacit message in their *Switch* advertisements is: switch because, unlike cigarettes, JUUL is harmless to your health.

238. Defendants' false, deceptive and misleading *Switch* campaign suggests that purchasing a JUUL will "switch" a smoker to a non-smoker and that it was designed to switch adult smokers off cigarettes rather than addict youth to nicotine.

239. Defendants know that a large number of smokers who use JUUL products do not end up switching but instead end up consuming both cigarettes and JUUL.

240. Moreover, Defendants know that, by design, a large number of their customers are first-time youth users and that JUUL was never designed to be a cessation device.

241. JLI has advertised cost-savings calculators as part of its *Switch* campaign. Those calculators assume that a smoker who switches will continue consuming the same amount of nicotine that he or she did as a smoker (*i.e.*, a pack a day smoker is presumed to consume one JUUL pod a day). Defendants know that the calculator is misleading because smokers who switch to JUUL frequently increase their nicotine intake.

242. JUUL labels and advertisements also marketed the product as an "alternative" to cigarettes:



243. Other advertisements similarly marketed the product as smoking “evolved”:



244. The goal of these advertisements was to convey the deceptive, misleading and false impression that JUUL products could help users quit smoking and break nicotine addiction in a way that was healthy and safe. But, as noted above, that was simply not the case. Defendants never disclosed to users that JUUL e-cigarettes and JUUL pods are at least as, if not more, addictive than combustible cigarettes. And each of JLI, the Management Defendants, and the Altria Defendants received data to this effect, as discussed above, and were aware of this fact.

245. In addition, the notions that JUUL products are designed only for existing cigarette smokers, and safer than combustible cigarettes are belied by JLI’s own knowledge, marketing plan and intentions on several fronts. *First*, Defendants sought to grow a new group of users of nicotine products (e.g., “vapers”), not just to market to the shrinking number of existing cigarette smokers. *Second*, JLI and Bowen designed the JUUL device to be easy to use for youth and others who have never smoked and to create and exacerbate nicotine addiction by encouraging ingestion of excessive amounts of nicotine. *Third*, as noted above, JLI’s own internal testing revealed that JUUL products were often more potent than combustible cigarette smokers prefer. Each of the Management Defendants knew this from his position on JLI’s Board of Directors, and the Altria Defendants knew the same when they began to actively coordinate with JLI and the Management Defendants. Despite



1 this knowledge, these Defendants made numerous deceptive, false and misleading public statements  
2 that JUUL was intended to be a cessation device.

3 246. JUUL is not a product adults typically use to quit smoking. Researchers have found that  
4 as of 2018, only 7.9% of American adults had ever used USB shaped e-cigarette devices, like JUUL,  
5 and only 2% of adults currently used them.<sup>254</sup> By contrast, a recent study found that 15- to 17-year-olds  
6 are *sixteen times* more likely to use JUUL products than 25 to 34-year-olds.<sup>255</sup>

7  
8 247. JLI's own marketing research indicated that JUUL was not appropriate as a cessation  
9 device for adults. In 2014, JLI when it was called Ploom hired the consumer research firm Tragon to  
10 do research with prototypes of the JUUL e-cigarette. On September 30, 2014, Lauren Collinsworth, a  
11 consumer researcher at Tragon, e-mailed Chelsea Kania, a marketing employee at Ploom, with some of  
12 the preliminary results from the studies. She stated that the testing showed that "the younger group is  
13 open to trying something new and liked J1 [the JUUL prototype] for being smart, new, techy, etc."<sup>256</sup>  
14 Ms. Collinsworth added that "The qualitative findings suggested *this product isn't going to fit as well*  
15 *with consumers who are looking to cut back on the cigarette intake.*"<sup>257</sup> On October 1, 2014, Ms.  
16 Collinsworth followed up with additional comments. She stated that "[t]he delivery was almost too  
17 much for some smokers, especially those used to regular e-cigarettes."<sup>258</sup> The final results from this  
18  
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23 <sup>254</sup> Kristy L. Marynak et al., *Use and Reasons for Use of Electronic Vapour Products Shaped like USB*  
24 *Flash Drivers Among a National Sample of Adults*, 28 TOBACCO CONTROL 685 (Nov. 2019),  
25 <https://tobaccocontrol.bmj.com/content/28/6/685>.

26 <sup>255</sup> D.M. Vallone et al., *Prevalence and Correlates of JLI Use Among a National Sample of Youth and*  
27 *Young Adults*, TOBACCO CONTROL (Oct. 29, 2018), [http://dx.doi.org/10.1136/tobaccocontrol-2018-](http://dx.doi.org/10.1136/tobaccocontrol-2018-054693)  
28 054693.

<sup>256</sup> JLI00365905.

<sup>257</sup> *Id.* (emphasis added).

<sup>258</sup> JLI00365709.



consumer research were distributed to upper management, including to then-CEO James Monsees<sup>259</sup> and then-Chief Marketing Officer Richard Mumby.<sup>260</sup>

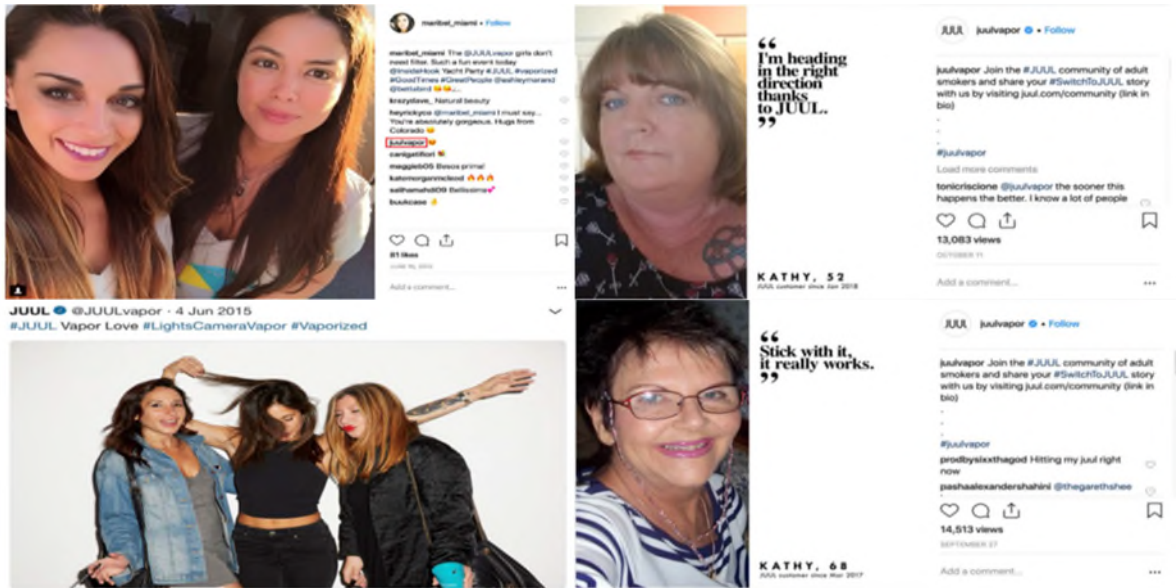
248. The deceptive, misleading and fraudulent nature of the “*Make the Switch*” campaign is evident when comparing the campaign’s advertisements to JUUL’s initial advertising, as demonstrated below. The fact that these advertisements are for the same product confirms that, notwithstanding the advice JLI and the Altria Defendants received from their media consultants, the Defendants never intended to target only adult smokers.



And

<sup>259</sup> JLI00364678.

<sup>260</sup> JLI00364487.



249. Defendants ensured that JUUL was the *opposite* of a “tool[] to reduce or eliminate” nicotine consumption. According to the National Institutes of Health, the “amount and speed of nicotine delivery . . . plays a critical role in the potential for abuse of tobacco products.”<sup>261</sup> As described above, JLI and Bowen designed the JUUL product to deliver nicotine in larger amounts and at a faster rate than even cigarettes, and then knowingly misled the public about those facts.

250. The *Switch* campaign also does not disclose or warn about the risks of using multiple tobacco products, “dual use” or that the JUUL is not a smoking cessation product. In addition to the heightened risks of addiction that multiple tobacco product use poses, one recent study found that persons who use e-cigarettes and smoke have blood toxin levels far higher than one would expect given the blood toxin levels that e-cigarettes and cigarettes generate individually.<sup>262</sup>

<sup>261</sup> U.S. Dep’t of Health & Human Servs., *Nicotine Addiction: Past and Present, How Tobacco Smoke Causes Disease* (2010), <https://www.ncbi.nlm.nih.gov/books/NBK53018/#ch4.s92>

<sup>262</sup> Julie B. Wang, et al., *Cigarette and E-Cigarette Dual use and Risk of Cardiopulmonary Symptoms in the Health eHeart Study*, 13 PLoS ONE 1 (2018).

1           251. The FDA and other government regulators, enforcing existing laws addressing e-  
 2 cigarettes,<sup>263</sup> publicly criticized the “*Make the Switch*” campaign and other efforts by Defendants to  
 3 depict JUUL as a smoking cessation device. Section 911(b)(2)(A)(i) of the Federal Food, Drug, and  
 4 Cosmetics Act (FDCA) (21 U.S.C. § 387k(b)(2)(A)(i)) states that when advertising or labeling of a  
 5 cigarette product directly or indirectly suggests that the product has a lower risk of cigarette-related  
 6 disease, is less harmful than traditional cigarettes, or is otherwise ‘safer’ than traditional cigarettes,  
 7 then the product becomes a “modified risk tobacco product.”<sup>264</sup>

9           252. In late 2019, and in response to the House of Representatives hearings in which JLI  
 10 executives testified, the FDA issued two warning letters to JLI detailing its concern that JLI was  
 11 unlawfully marketing its e-cigarette products as cessation tools or as “modified risk tobacco products”  
 12 within the meaning of the FDCA.<sup>265</sup>

14           253. Then, in its September 9, 2019 letter to JLI, the FDA notified JLI that its advertising  
 15 slogans such as “99% safer,” “much safer,” and “a safer alternative” than cigarettes was “particularly  
 16 concerning because [those] statements were made directly to children in school.”<sup>266</sup> The FDA  
 17 concluded that in using advertising language that e-cigarettes were safer than cigarettes, JLI had  
 18 violated Sections 902(8) and 911 by marketing JUUL products as “modified risk tobacco products”  
 19 without prior approval.<sup>267</sup>

22 \_\_\_\_\_  
 23 <sup>263</sup> Section 911(b)(2)(A)(i) of the FDCA (21 U.S.C. § 387k(b)(2)(A)(i)) states that when advertising or  
 24 labeling of a cigarette product directly or indirectly suggests that the product has a lower risk of  
 25 cigarette-related disease, is less harmful than traditional cigarettes, or is otherwise ‘safer’ than  
 26 traditional cigarettes, then the product becomes a “modified risk tobacco product.”

27 <sup>264</sup> *Id.*

28 <sup>265</sup> Letter from U.S. Food and Drug Admin. to Kevin Burns, CEO of JUUL Labs, Inc., (Sept. 9, 2019),  
<https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/juul-labs-inc-590950-09092019>.

<sup>266</sup> *Id.*

<sup>267</sup> *Id.*

1           254. The September 9, 2019 letter also detailed the FDA’s concerns with JLI’s “Switch”  
 2 marketing campaign. “[T]roubled by recent testimony” that JLI had given to the House Subcommittee  
 3 on Economic and Consumer Policy of the Committee on Oversight and Reform, the FDA noted that  
 4 JLI’s *Switch* advertising campaign “may also convey that switching to JUUL is a safer alternative to  
 5 cigarettes.”<sup>268</sup>  
 6

7           255. The FDA specifically highlighted the *Switch* campaign slogans which referenced  
 8 smoking cigarettes, or attempts to quit smoking, followed by “*Make the Switch.*” The FDA stated that  
 9 JLI’s campaign was in violation of multiple FDA regulations and the FDCA subsections, and that JLI’s  
 10 *Switch* campaign purported to tell the public that using e-cigarettes was an alternative to smoking, or a  
 11 possible cessation tool.<sup>269</sup>  
 12

13           256. On the same day, the FDA requested that JLI provide all documents related to its  
 14 decision to market the Switch campaign to the Cheyenne River Sioux Tribe, in light of the testimony  
 15 by JLI that it had taken a “public health” approach to Native American tribes, and had sought  
 16 healthcare professionals to refer Native American smokers to JLI’s Switching Program.<sup>270</sup>  
 17

18           257. Perhaps unsurprisingly, the *Make the Switch* campaign was spearheaded by a marketing  
 19 firm with long-standing ties to the cigarette industry. In particular, it was led by a subsidiary of  
 20 Omnicom Group, Inc., one of the “Big Four” advertising holding companies dominating marketing and  
 21 communications worldwide since the 1990s, second only to WPP. Omnicom is the parent company of  
 22 Mercury Public Affairs which, by at least April 2018, counted both Altria and JLI as its clients.  
 23  
 24  
 25

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26 <sup>268</sup> Letter from U.S. Food and Drug Admin. Ctr. for Tobacco Prods. to JUUL Labs, Inc. (Sept. 9,  
 27 2019), <https://www.fda.gov/media/130859/download>.

28 <sup>269</sup> *Id.*

<sup>270</sup> *Id.*

Mercury lobbied for Altria on tobacco regulations,<sup>271</sup> and helped JLI push back against negative press coverage of youth usage of its products.<sup>272</sup>

258. For example, on April 2, 2018, a managing director from Mercury, Erick Mullen, emailed Defendant Valani and Daniel Cruise, Chief Public Affairs Officer at JLI, with a numbered list of actions in response to *The New York Times* article published that day, “‘I Can’t Stop’: Schools Struggle With Vaping Explosion.”<sup>273</sup> Mercury’s list includes the recommendation to push the idea that JLI’s nicotine formulation is no more harmful than water, sugar, and caffeine: “Engage the press on all the definitions in every fucking story: it’s not a ‘cigarette’ of any kind; there’s no smoke and nothing medical science has on the books says water and nicotine is more harmful than water, sugar and caffeine.”<sup>274</sup>

259. Defendant Valani and Cruise each separately forwarded the email to JLI CEO Kevin Burns, with Cruise commenting, “Kevin, recent email from friend Erick—a possible ‘campaign manager’” for us. His argument is in line with yours. We need to be systematic, aggressive and relentless. Btw we are not tobacco—have [you] corrected today’s NYT story?”<sup>275</sup>

<sup>271</sup> Kevin McCauley, *Altria Taps Mercury For Tobacco Regulation Work*, O’DWYER’s (Jun. 4, 2018), <https://www.odwyerpr.com/story/public/10754/2018-06-04/altria-taps-mercury-for-tobacco-regulation-work.html>.

<sup>272</sup> See, e.g., INREJUUL\_00262168; INREJUUL\_00262226-INREJUUL\_00262227.

<sup>273</sup> See INREJUUL\_00262168; see also Kate Zernike, *‘I Can’t Stop’: Schools Struggle With Vaping Explosion*, N.Y. Times (Apr. 2, 2018), <https://www.nytimes.com/2018/04/02/health/vaping-ecigarettes-addiction-teen.html>.

<sup>274</sup> INREJUUL\_00262168.

<sup>275</sup> INREJUUL\_00262226-227.

260. In August 2018, Omnicom agency DDB Chicago<sup>276</sup> sent JLI a proposal for an estimated \$11 million campaign “to more firmly establish the true intent of the company,” noting that JLI was “moving *very fast*.”<sup>277</sup> This campaign was “*Make the Switch*.”

**5. JLI, Altria, and Others in the E-Cigarette Industry Coordinated with Third-Party Groups to Mislead the Public About the Harms and Benefits of E-Cigarettes.**

261. Through a collective and parallel effort of funding, leadership, and board membership, JLI, the Altria Defendants and others in the e-cigarette industry leveraged third-parties, ranging from industry-funded non-governmental organizations to online blogs more accessible to youth, to mislead the public about the impacts of consuming e-cigarettes.

262. An assortment of lobbyists, trade associations, and online publications have coordinated with the e-cigarette industry, including JLI and the Altria Defendants, to promote a consistent message that consuming e-cigarettes is not harmful, that nicotine is not harmful, and that the impacts of e-cigarettes are greatly exaggerated. These organizations receive funding from the e-cigarette industry, feature executives on those companies’ boards of directors, and in return, promote industry products, industry views, or fund “independent” studies of their own that reach the same conclusions as e-cigarette industry-funded research.

**a. The American Vaping Association**

263. The American Vaping Association (“AVA”) is a pro-e-cigarette lobby group founded by Greg Conley, who notably publishes articles criticizing the CDC for its stance on restricting e-cigarette use.<sup>278</sup> Other executive members of the AVA possess business interests in e-cigarettes; for

<sup>276</sup> See INREJUUL\_00066530-539 (Other Omnicom entities were involved in this campaign. For example, OMD, “sister company to DDB and part of the Omnicom Group,” sent JLI detailed Statements of Work for a U.S. Brand Campaign covering September 16, 2018 through February 28, 2019).

<sup>277</sup> See INREJUUL\_00074841; see also INREJUUL\_00074842-844 at 842.

<sup>278</sup> Jeff Stier & George Conley, *The War on E-Cigarettes*, NATIONAL REVIEW (Sept. 19, 2011), <https://www.nationalreview.com/2011/09/war-e-cigarettes-jeff-stier-gregory-conley/>.



example, Treasurer David J. Danzak Jr. is associated with an e-cigarette business called Vapornine LLC.<sup>279</sup> Vice-President Antoinette Lanza is an owner of an exclusively e-cigarette shop in Hoboken, New Jersey called Smokeless Image.<sup>280</sup> Half of the AVA's functional expenses are for lobbying efforts.<sup>281</sup> It lists several sponsors, all of which are e-cigarette, e-liquid, or cigarette companies.<sup>282</sup>

264. Conley has a prolific social media presence and frequently appears on television and radio to tout the benefits of consuming e-cigarettes and dispute negative news. The AVA website lists "studies" which are uniformly authored by noted industry-funded or industry-friendly authors, such as Polosa and Shahab.<sup>283</sup> AVA lists CASAA, Not Blowing Smoke, and the VTA, all established fronts for the e-cigarette industry, as "Resources."

265. The AVA receives its funding from sponsors, who are organized into tiers such as Platinum, Gold, Silver, Bronze, and Green.<sup>284</sup> Current advertised sponsors include e-cigarette distributors and retailers such as E-Cigarette Empire, and VaporBeast.<sup>285</sup> Prior sponsors are a who's who of e-cigarette retailers. In 2016, Platinum sponsors included AltSmoke and Vapor Kings, while Gold sponsors included the now defunct Smokeless Image.<sup>286</sup>

<sup>279</sup> Vapornine LLC, BUZZFILE, <http://www.buzzfile.com/business/Vapornine-LLC-904-372-3244> (business information page).

<sup>280</sup> Stacy Jones, *Tobacco Regulators Mull More Oversight as E-cigarettes See Increased Popularity*, NJ.com (Mar. 30, 2019),

[https://www.nj.com/business/2013/07/tobacco\\_regulators\\_mull\\_more\\_o.html](https://www.nj.com/business/2013/07/tobacco_regulators_mull_more_o.html).

<sup>281</sup> Form 990, American Vaping Association Inc.'s Return of Organization Exempt from Income Tax (2018), [https://apps.irs.gov/pub/epostcard/cor/464203951\\_201812\\_990O\\_2019122716980021.pdf](https://apps.irs.gov/pub/epostcard/cor/464203951_201812_990O_2019122716980021.pdf).

<sup>282</sup> AVA Sponsors, American Vaping Association, <https://vaping.org/about-us/ava-sponsors/>.

<sup>283</sup> Research Reports, American Vaping Association, <https://vaping.org/research-report/>.

<sup>284</sup> AVA Sponsors, American Vaping Association, <https://vaping.org/about-us/ava-sponsors/>.

<sup>285</sup> *Id.*

<sup>286</sup> AVA Sponsors, American Vaping Association, Wayback Machine – Internet Archive (Aug. 14, 2017), <https://web.archive.org/web/20170814221226/http://vaping.org/about-us/ava-sponsors/>.



1           266. On social media, the AVA regularly downplays the risks of consuming e-cigarettes,  
2 criticizes negative coverage as myths or exaggerations, and lauds efforts to curb any regulation of the  
3 e-cigarette industry.<sup>287</sup>

4           267. JLI actively sought out the AVA to promote JUUL. In January 2016, e-mails between  
5 employees at JLI (then known as PAX) discussed a “list of thought leaders [JLI] can tap for stories for  
6 JUUL” which included Conley at the AVA and Satel.<sup>288</sup>

7           268. In 2018, JLI took advantage of its coordinated efforts with the AVA to downplay the  
8 risks associated with JUUL. In an e-mail exchange between Christine Castro of JLI and a  
9 “Stratcomms” internal mailing list, Castro lamented a “testy conversation” with a USA Today reporter  
10 who pointed out that JLI’s marketing and advertising appeared to feature and target minors and  
11 teenagers.<sup>289</sup> Castro noted that “I hit back at [the reporter] very aggressively but we can expect the  
12 usual B.S. Greg Conley is being allowed to write a 300-word rebuttal. I will email him and copy you  
13 Ashley [JLI employee] just so we can stay coordinated.”<sup>290</sup>

14           269. The AVA also coordinated with JLI on pro-e-cigarette research. In March 2018, Conley  
15 facilitated a conversation between Dr. Konstantinos Farsalinos, a researcher at the University of Patras,  
16 Greece, who regularly publishes e-cigarette industry-friendly articles, and Gal Cohen, then Director of  
17 Scientific Affairs at JLI.<sup>291</sup> In the e-mail, Conley asks Farsalinos to send Cohen “some info on your  
18 flavor study” to which Farsalinos responds by sending Conley and Cohen an attachment: “USA  
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24 <sup>287</sup> American Vaping Association (@AVABoard), Twitter, <https://twitter.com/AVABoard>.

25 <sup>288</sup> INREJUUL\_00278889

26 <sup>289</sup> See INREJUUL\_00173252 (Apr. 4, 2018 email).

27 <sup>290</sup> *Id.*

28 <sup>291</sup> Juul Labs, Inc., *JUUL Labs Presents Findings at the Global Forum on Nicotine 2018*, Cision PR Newswire (June 15, 2018), <https://www.prnewswire.com/news-releases/juul-labs-presents-findings-at-the-global-forum-on-nicotine-2018-300666743.html>.

1 FLAVORS SURVEY.pptx” and the note: “[A]ttached is a PowerPoint presentation about the study we  
2 proposed.”<sup>292</sup>

3 270. The proposed study was a survey aimed at determining what flavors different  
4 demographic groups preferred as e-cigarette flavors, which flavors they use frequently, and which  
5 flavors they used when they first started consuming e-cigarettes. While the study was purportedly to  
6 determine the impact of e-cigarette flavors on e-cigarette and smoking behavior, the data obtained from  
7 such a study would have allowed JLI to understand which flavors were not only the most popular, but  
8 which flavors were most popular by demographic.<sup>293</sup>

10 **b. Vaping360**

11 271. Vaping360 is a website dedicated to news regarding the e-cigarette industry. The  
12 website boasts “40 million smokers and vaping enthusiasts reached since 2015.” This entity has a big  
13 social media presence and huge publication strategy.

15 272. Vaping360’s main message misleads the public about the health impacts of consuming  
16 e-cigarettes. Vaping360 has published various articles, including “10 Lies and Myths About Juuling  
17 Exposed.”<sup>294</sup> This article, published in May 9, 2018, claimed, among other things, that JUUL was not  
18 as dangerous as smoking; JUUL did not cause cancer or “popcorn lung”; JUUL was not popular  
19 among teenagers, nor did JLI sell kid-friendly flavors or flavors aimed to entice young people; and the  
20 nicotine in JUUL is “a relatively mild drug, [and] may cause dependence.”<sup>295</sup>

22 273. Vaping360 regularly published articles praising, promoting, or downplaying the risks of  
23 JUUL, including, among others: “These Scientists Want to Kill Smokers’ Hope (For Vaping)”; “UK  
24

25 <sup>292</sup> INREJUUL\_0034128.

26 <sup>293</sup> *Id.*

27 <sup>294</sup> Jim McDonald, *10 Lies and Myths About Juuling Exposed*, Vaping 360 (May 9, 2018),  
<https://vaping360.com/lifestyle/juuling/>.

28 <sup>295</sup> *Id.*

1 Scientists to WHO: Your Vape Report Is Junk”; “One Free Pack JUUL Coupon Codes 2019”; and an  
 2 article disparaging anti-smoking advocacy group Truth Initiative by claiming that “Truth Initiative  
 3 Promo Encourages Risky Teen Behavior.”<sup>296</sup>

4 274. One of the main writers at Vaping360 is Jim McDonald who aggressively attacks any  
 5 negative science as fake news. For example, McDonald frequently posts on social media platforms,  
 6 including on Facebook and Twitter, but also comments on others posts extensively disputing negative  
 7 news about consuming e-cigarettes.<sup>297</sup>

8 275. Vaping360 has taken funding from e-cigarette manufacturers, and in return coordinates  
 9 with e-cigarette manufacturers to promote their products, while publishing favorable content.  
 10 Vaping360 was paid by JLI for advertising and was given kickbacks (referred to as commission) for  
 11 every coupon used for JUUL that originated from Vaping 360’s website.  
 12

13 276. In March 2017, JLI (then PAX) communicated with Chris Kendell and others at  
 14 Vaping360 to discuss promoting JLI’s products with a 15% discount coupon on Vaping360’s  
 15 website.<sup>298</sup> JLI representative Andy Martin also noted that JLI “figured out the commission issue,” and  
 16 expressed excitement at JLI’s new mango flavor JUUL pod.<sup>299</sup> They also discussed a Facebook  
 17 advertising link whereby Vaping360 could offer similar discounts for JLI products on social media.<sup>300</sup>  
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23 <sup>296</sup> Jim McDonald, *Truth Initiative Promo Encourages Risky Teen Behavior*, Vaping 360 (Jan. 9, 2020),  
 24 <https://vaping360.com/vape-news/87705/truth-initiative-promo-encourages-risky-teen-behavior/>.

25 <sup>297</sup> Jim McDonald, *Mass. Senate Passes Worst Vaping Law in the Countr*, Vaping 360 (Nov. 21, 2019),  
 26 <https://vaping360.com/vape-news/86852/mass-senate-passes-worst-vaping-law-in-the-country/>; Jim  
 McDonald, *Meet the Rich Moms Who Want to Ban Vaping*, Vaping 360 (Oct. 8, 2018),  
 27 <https://vaping360.com/vape-news/71696/meet-the-rich-moms-who-want-to-ban-vaping/>.

28 <sup>298</sup> INREJUUL\_00143870.

<sup>299</sup> *Id.*

<sup>300</sup> *Id.*

277. In November 2017, Martin of JLI and Rawad Nassif of Vaping360 discussed a meeting agenda, with topics such as “new affiliate commission terms,” “JLI funnelling [sic] project,” and “exploring further opportunities.”<sup>301</sup>

278. In 2018, McDonald continued to write articles specifically praising JLI, such as “Coming Soon: A JUUL to Help You Quit JUULing” and “10 Lies and Myths About JUULing Exposed.”<sup>302</sup> As of 2020, Vaping360 continues to offer discounts for JUUL products.<sup>303</sup>

**c. Foundation for a Smoke-Free World**

279. The Foundation was founded in 2017, and presents itself as a public health organization, purportedly “advancing global progress in smoking cessation and harm reduction.”<sup>304</sup> It is funded entirely by Philip Morris International, which in 2017 announced a \$1 billion commitment to fund the Foundation.<sup>305</sup> The Foundation’s 2018 Form 990 lists only one donor: PMI Global Services, Inc., or Philip Morris International, with a contribution of \$80 million.<sup>306</sup>

280. The Foundation is headed by Derek Yach, a noted advocate and promoter of e-cigarettes and consuming e-cigarettes.<sup>307</sup>

<sup>301</sup> INREJUUL\_00139196

<sup>302</sup> Jim McDonald, *Coming Soon: A JUUL to Help You Quit Juuling*, Vaping 360 (Sept. 7, 2018), <https://vaping360.com/vape-news/70262/coming-soon-a-juul-to-help-you-quit-juuling/>.

<sup>303</sup> [One FREE Pack] JUUL Coupon Codes 2019, Vaping 360 (Aug. 24, 2018) <https://vaping360.com/vape-coupons/juul-coupon-promo-code/>.

<sup>304</sup> Foundation for a Smoke-Free World (2020), <https://www.smokefreeworld.org/>.

<sup>305</sup> David Meyer, *Philip Morris Pledges Almost \$1 Billion to Anti-Smoking Fight*, FORTUNE (Sept. 13, 2017), <https://www.webcitation.org/6tjyBv4dA>.

<sup>306</sup> Return of Private Foundation, Foundation for a Smoke-Free World (2018), [https://web.archive.org/web/20190828104138/https://www.smokefreeworld.org/sites/default/files/uploads/documents/fsfw\\_2018\\_form\\_990-pf\\_public\\_inspection.pdf](https://web.archive.org/web/20190828104138/https://www.smokefreeworld.org/sites/default/files/uploads/documents/fsfw_2018_form_990-pf_public_inspection.pdf).

<sup>307</sup> *Derek Yach: Anti-smoking Advocates Should Embrace E-cigarettes*, NATIONAL POST (Aug. 26, 2015), <https://nationalpost.com/opinion/derek-yach-anti-smoking-advocates-should-embrace-e-cigarettes>.

281. In 2018, the Foundation announced that it would support Centers of Excellence to conduct tobacco control research.<sup>308</sup> This tactic is a well-known tool of the cigarette industry, which has a history of funding “research” centers to promote industry-friendly views, such as the Center for Indoor Air Research, which promulgated industry-funded studies that sowed doubt about the addictiveness of nicotine, claimed that indoor air quality was unaffected by cigarette smoke and downplayed the harms of cigarettes broadly. Institutes such as the Center for Indoor Air Research were forced to dissolve as part of the Master Settlement Agreement in 1998.

282. A 2017 report in The Verge detailed the e-cigarette industry’s apparently coordinated efforts to use biased research to downplay the risks of consuming e-cigarettes.<sup>309</sup> For example, e-cigarette manufacturers routinely conduct studies focusing on the “good news” about e-cigarettes, *i.e.* they release less harmful aerosolized chemicals than combustible cigarettes, or that their aerosol lingers for less time indoors than combustible cigarettes.<sup>310</sup> Industry-funded authors then regularly cite to each other’s studies in their own research.<sup>311</sup> On information and belief, JLI and Altria, among

<sup>308</sup> Support Global Research, Foundation for a Smoke-Free World (May 31, 2018), <https://web.archive.org/web/20180531105105/https://www.smokefreeworld.org/our-areas-focus/support-global-research>.

<sup>309</sup> Liza Gross, *Vaping Companies are Using the Same Old Tricks as Big Tobacco*, THE VERGE (Nov. 16, 2017), <https://www.theverge.com/2017/11/16/16658358/vape-lobby-vaping-health-risks-nicotine-big-tobacco-marketing>.

<sup>310</sup> See, e.g., J. Margham, et al., *Chemical Composition of Aerosol from an E-Cigarette: A Quantitative Comparison with Cigarette Smoke*, 29 CHEM. RES. TOXICOL. 1662 (2016); Tanvir Walele et al., *Evaluation of the Safety Profile of an Electronic Vapour Product Used for Two Years by Smokers in a Real-life Setting*, 92 REG. TOXICOL. PHARMACOL. 226 (2018); D. Martuzevicius, et al., *Characterization of the Spatial and Temporal Dispersion Differences Between Exhaled E-Cigarette Mist and Cigarette Smoke*, 21 NICOTINE & TOBACCO RES. 1371 (2019).

<sup>311</sup> See, e.g., Gene Gillman et al., *Determining the Impact of Flavored E-liquids on Aldehyde Production During Vaping*, 112 REG. TOXICOL. PHARMACOL. 1 (2020); Colin Mendelsohn & Alex Wodak, *Legalising Vaping in Australia*, The McKell Institute (March 2019), <https://pdfs.semanticscholar.org/3e13/8e46419913a29f8fc9ddad52ec771f73fa76.pdf>; Violeta Kaunelienė et al., *Impact of Using a Tobacco Heating System (THS) on Indoor Air Quality in a Nightclub*, 19 AEROSOL AND AIR QUAL. RES. 1961 (2019); Maya Mitova et al., *Human Chemical Signature: Investigation on the Influence of Human Presence and Selected Activities on Concentrations of Airborne Constituents*, 257 ENV'TL POLLUTION 1 (2020).

1 others in the e-cigarette industry, funnel their industry-funded studies to friendly pro-industry groups  
 2 knowing that those entities will misrepresent the results as evidence that e-cigarettes are safe, or not  
 3 harmful.

4 **d. Vapor Technology Association**

5 283. The Vapor Technology Association (VTA) bills itself as a trade association and  
 6 advocates for the e-cigarette industry. It was founded in January 2016, with the banner tagline on its  
 7 website reading “VAPE IS HOPE.”<sup>312</sup>

8 284. In 2018, JLI, SMOK, VMR, Turning Point Brands, and Joyetech were all featured as  
 9 “Platinum Members,” a level of membership that required a \$100,000 annual contribution. Thus, JLI  
 10 paid VTA \$100,000 in 2018 to become a Platinum Member, and in return, VTA offered JLI a board  
 11 seat; invitations to lobbying strategy meetings; access to the FDA, other federal agencies, and members  
 12 of Congress; and conference participation.<sup>313</sup>

13 285. The VTA, like other lobbying and trade association groups in the industry, advocates  
 14 for less regulation of e-cigarettes, and testifies in opposition to flavor bans.<sup>314</sup>

15 **e. Retailer Lobbying**

16 286. Retailers have also taken to creating subsidiaries or wholly owned companies whose  
 17 purpose is to produce quasi-journalistic content to promote consuming e-cigarettes, discredit health  
 18 initiatives, and suggest that consuming e-cigarettes has no harmful health impacts. The best example of  
 19 this is the website SoupWire, which publishes articles and editorials that promote consuming e-  
 20 cigarettes and criticizes studies that look at the negative impacts of consuming e-cigarettes.<sup>315</sup> For  
 21  
 22  
 23

24  
 25 <sup>312</sup> Vape is Hope, Vapor Technology Association (Feb. 25, 2016),

<https://web.archive.org/web/20160225154600/http://www.vaportechnology.org:80/>

26 <sup>313</sup> Some of Our Members, Vapor Technology Association (Nov. 28, 2018),

<https://web.archive.org/web/20181128162940/https://vaportechnology.org/membership/>

27 <sup>314</sup> Vapor Technology Association, <https://vaportechnology.org/>.

28 <sup>315</sup> Soupwire – The Truth About Vaping, <https://soupwire.com/>.

example, when JLI donated \$7.5 million towards a study on the impacts of consuming e-cigarettes on teens, a SoupWire report concluded that the study will likely find “nothing Earth-shattering.”<sup>316</sup>

**6. Altria Falsely Stated That It Intended to Use Its Expertise in “Underage Prevention” Issues to JLI**

287. Altria’s announcement that it intended to invest in JLI came less than two months after it told the FDA that Altria “believe[s] that pod-based products significantly contribute to the rise in youth use of e-vapor products” and that it accordingly would be removing its own pod-based products from the market.<sup>317</sup> Altria made the same representations to its investors.<sup>318</sup>

288. Although Altria claimed its investment in JLI had an altruistic motive—“ When you add to JUUL's already substantial capabilities, our underage tobacco prevention expertise and ability to directly connect with adult smokers, we see a compelling future with long-term benefits for both adult tobacco consumers and our shareholders,” Altria recently confirmed that JLI has not even availed itself of that experience.<sup>319</sup> In Altria’s October 2019 letter to Senator Richard Durbin, Altria CEO Howard Willard acknowledged that while Altria “offered to JUUL services relating to underage prevention efforts,” to date “JUUL has not accepted Altria’s offers of assistance in addressing underage vaping relating issues.”<sup>320</sup> Willard has stated that the deal would allow Altria to “work[] with JUUL to accelerate its mission.”<sup>321</sup> but as Altria knew, as reflected in its letter to the FDA just two months prior,

<sup>316</sup> Jeff Hawkins, *JUUL Donates \$7.5 Million to Teen Vaping Study*, Soupwire – The Truth About Vaping (July 2, 2019), <https://soupwire.com/juul-donates-7-5-million-to-teen-vaping-study/>

<sup>317</sup> Letter from Howard A. Willard III, Altria, to Dr. Scott Gottlieb, FDA, 2 (October 25, 2018)

<sup>318</sup> Altria Group Inc (MO) Q3 2018 Earnings Conference Call Transcript, (October 25, 2018) <https://www.fool.com/earnings/call-transcripts/2018/10/25/altria-group-inc-mo-q3-2018-earnings-conference-ca.aspx>

<sup>319</sup> Altria Group (MO) Q4 2018 Earnings Conference Call Transcript: MO earnings call for the period ending December 31, 2018. (Jan. 31, 2019), <https://www.fool.com/earnings/call-transcripts/2019/02/01/altria-group-mo-q4-2018-earnings-conference-call-t.aspx>

<sup>320</sup> Letter from Howard A. Willard III to Senator Richard J. Durbin (October 14, 2019) (emphasis added).

<sup>321</sup> Altria Makes \$12.8 Billion Minority Investment in JUUL to Accelerate Harm Reduction and Drive Growth, Business Wire (Dec. 20, 2018, 7:00 AM EST),



1 that mission involved had resulted in usage throughout the youth market. Altria's admission that pod-  
 2 based products contributed to underage use show that Altria knew its investment in JLI would  
 3 "strengthen[] its financial profile and enhance[] future growth prospects" specifically because JLI  
 4 dominated the youth market for e-cigarettes.<sup>322</sup>

5  
 6 289. Altria recognized that JLI's market share dominance in the e-cigarette market, a share  
 7 that it knew was gained via youth targeting and false and misleading advertising, was the path to  
 8 Altria's continued viability and profitability. In a January 31, 2019 earnings call, Altria explained that  
 9 "[w]hen you add to JUUL's already substantial capabilities, our underage tobacco prevention expertise  
 10 and ability to directly connect with adult smokers, we see a compelling future with long-term benefits  
 11 for both adult tobacco users and our shareholders. We are excited about JUUL's domestic growth and  
 12 international prospects and their potential impact on our investment."<sup>323</sup> JUUL's growth was, as Altria  
 13 well knew, due to the product's viral popularity among teens. Willard briefly acknowledged the youth  
 14 vaping crisis, stating, "Briefly touching on the regulatory environment, the FDA and many others are  
 15 concerned about an epidemic of youth e-vapor usage. We share those concerns. This is an issue that we  
 16 and others in the industry must continue to address aggressively and promptly."<sup>324</sup>

17  
 18 290. Altria's representations that it intended to help JUUL curb the prevalence of underage  
 19 use was false and misleading. As discussed below, Altria coordinated with JUUL to capture and  
 20 maintain the youth market.  
 21  
 22

23 [https://www.businesswire.com/news/home/20181220005318/en/Altria-12.8-Billion-Minority-](https://www.businesswire.com/news/home/20181220005318/en/Altria-12.8-Billion-Minority-Investment-JUUL-Accelerate)  
 24 [Investment-JUUL-Accelerate.](https://www.businesswire.com/news/home/20181220005318/en/Altria-12.8-Billion-Minority-Investment-JUUL-Accelerate)

25 <sup>322</sup> Press Release, *Altria Makes \$12.8 Billion Minority Investment In Juul To Accelerate Harm*  
*Reduction And Drive Growth*, Altria (Dec. 20, 2018),

26 <https://www.sec.gov/Archives/edgar/data/764180/000119312518353970/d660871dex991.htm>.

27 <sup>323</sup> Altria Group (MO) Q4 2018 Earnings Conference Call Transcript: MO earnings call for the period  
 28 ending December 31, 2018 (Jan. 31, 2019), [https://www.fool.com/earnings/call-](https://www.fool.com/earnings/call-transcripts/2019/02/01/altria-group-mo-q4-2018-earnings-conference-call-t.aspx)  
[transcripts/2019/02/01/altria-group-mo-q4-2018-earnings-conference-call-t.aspx](https://www.fool.com/earnings/call-transcripts/2019/02/01/altria-group-mo-q4-2018-earnings-conference-call-t.aspx).

<sup>324</sup> *Id.*

**E. Defendants Targeted the Youth Market**

291. Having created a product, like combustible cigarettes, that sought to get users addicted to nicotine, and while taking steps to ensure that users and regulators did not appreciate the true nicotine content or potential harm from using JUULs, to successfully sink their high-tech nicotine hook into American users, JLI, Bowen, and Monsees needed investors willing to adopt the tactics of the cigarette industry as their own. They found those investors in Pritzker, Huh, and Valani.

292. Under the leadership of the Management Defendants, JLI marketed nicotine to kids. JLI and the Management Defendants deployed a sophisticated viral marketing campaign that strategically laced social media with false and misleading messages to ensure their uptake and distribution among young users. JLI and the Management Defendants' campaign was wildly successful—burying their hook into kids and initiating a public health crisis.

**1. JLI Emulated the Marketing of Cigarette Companies.**

293. As Defendants know, nearly 9 out of 10 smokers start smoking by age 18, and more than 80% of underage smokers choose brands from among the top three most heavily advertised.<sup>325</sup> The overwhelming consensus from public health authorities, independent studies, and credible expert witnesses is that “marketing is a substantial contributing factor to youth smoking initiation.”<sup>326</sup>

294. Struggling to define their own identities, teenagers are particularly vulnerable to image-heavy advertisements that psychologically cue them on the “right” way to look and behave amongst peers.<sup>327</sup> Advertisements that map onto adolescent aspirations and vulnerabilities drive adolescent tobacco product initiation.<sup>328</sup>

<sup>325</sup> U.S. Dep’t Health & Human Servs., *Preventing Tobacco Use Among Youths, Surgeon General Fact Sheet*, <https://www.hhs.gov/surgeongeneral/reports-and-publications/tobacco/preventing-youth-tobacco-use-factsheet/index.html>.

<sup>326</sup> *United States v. Philip Morris*, 449 F. Supp. 2d 1, 570 (D.D.C. 2006) (J. Kessler).

<sup>327</sup> *Id.* at 578.

<sup>328</sup> *Id.* at 570, 590

1           295. For decades, cigarette companies spun smoking as signifier of adulthood. This turned  
 2 smoking into a way for teenagers to project independence and enhance their image among their  
 3 peers.<sup>329</sup>

4           296. Youth marketing was critical to the success of cigarette companies. In the 1950s, Philip  
 5 Morris—now JUUL’s corporate affiliate—intentionally marketed cigarettes to young people as a pool  
 6 from which to “replace smokers” to ensure the economic future of the cigarette industry.<sup>330</sup>

7           297. Philip Morris’s documents set out their youth strategy, explaining: “Today’s teenager is  
 8 tomorrow’s potential regular customer, and the overwhelming majority of smokers first begin to smoke  
 9 while still in their teens”.<sup>331</sup>

10           298. It wasn’t just Philip Morris. The strategy of hooking kids was an open secret in the  
 11 cigarette industry.<sup>332</sup>

12           299. As detailed below, JLI and the Management Defendants sought to emulate this  
 13 approach. Indeed, Monsees admitted to using historical cigarette ads to inform JLI’s own advertising  
 14 campaign.<sup>333</sup>

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 19 <sup>329</sup> *Id.* at 1072.

20 <sup>330</sup> *United States. v. Philip Morris*, No. 99- 2496 (D.D.C. Aug. 17, 2006), ECF No. 5750 at 972  
 (Amended Final Opinion).

21 <sup>331</sup> *Tobacco Company Quotes on Marketing to Kids*, Campaign for Tobacco-Free Kids (May 14, 2001),  
<https://www.tobaccofreekids.org/assets/factsheets/0114.pdf>.

22 <sup>332</sup> C.A. Tucker, *Marketing Plans Presentation to RJRI B of D* at 2, U.C.S.F. Truth Tobacco Industry  
 Documents (Sept. 30, 1974),  
 23 <https://www.industrydocumentslibrary.ucsf.edu/tobacco/docs/#id=ypmw0091> (RJ Reynolds executive  
 24 explaining that the “young adult . . . market . . . represent[s] tomorrow’s cigarette business. As this 14-  
 25 24 age group matures, they will account for a key share of the total cigarette volume—for at least the  
 next 25 years.”).

26 <sup>333</sup> Matthew Perone & Richard Lardner, *Juul exec: Never intended electronic cigarette for teens*, AP  
 News (July 26, 2019), <https://apnews.com/4b615e5fc9a042498c619d674ed0dc33>; Gabriel Montoya,  
 27 *Pax Labs: Origins with James Monsees*, Social Underground,  
<https://socialunderground.com/2015/01/pax-ploom-origins-future-james-monsees> (last visited Apr. 3,  
 28 2020).

300. The emulation is obvious. A side-by-side comparison of JUUL advertisements with historical cigarette advertisements reveals the appropriated pattern of focusing on imagery related to attractiveness, stylishness, sex appeal, fun, “belonging,” relaxation, and sensory pleasure, including taste.<sup>334</sup>



<sup>334</sup> See Appendix A, Ads 9-50.  
PLAINTIFF'S COMPLAINT



301. JLI and the Management Defendants deployed this same strategy, but adapted it to modern advertising tactics.

## 2. The Management Defendants Intentionally Marketed JUUL to Young People.

302. The risk that children would use a new e-cigarette product was well known and well publicized in the months leading up to the launch of the JUUL e-cigarette. For example, in April 2015, the CDC published the results from its 2014 National Youth Tobacco Survey.<sup>335</sup> The CDC found that “[i]n 2014, e-cigarettes were the most commonly used tobacco product among middle (3.9%) and high (13.4%) school students.”<sup>336</sup> Moreover, “[b]etween 2011 and 2014, statistically significant increases were observed among these students for current use of both e-cigarettes and hookahs ( $p < 0.05$ ), while decreases were observed for current use of more traditional products, such as cigarettes and cigars, resulting in no change in overall tobacco use.”<sup>337</sup> The CDC blamed e-cigarette marketing, the use of “a

<sup>335</sup> Centers for Disease Control and Prevention, *Tobacco Use Among Middle and High School Students — United States, 2011–2014*, Morbidity and Mortality Weekly Report (MMWR) 64(14):381-385 (Apr. 17, 2015), <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6414a3.htm>.

<sup>336</sup> *Id.*

<sup>337</sup> *Id.*



1 mixture of ‘sex, free samples, [and] flavors’—the same things that were originally found to be  
 2 problematic with cigarette ads.”<sup>338</sup>

3 303. Seeking to enter this nascent youth market for e-cigarettes, JLI intentionally targeted  
 4 youth from its inception. In March 2015, Management Defendants supervised the advertising  
 5 campaigns that would accompany the launch of JUUL.

6 304. JLI knew that its initial customer base would be the key to its growth. On June 15,  
 7 2015, JLI’s COO Scott Dunlap wrote an article on Entrepreneur.com called “6 Ways to Get a Fanatical  
 8 Customer Base,” #1 of which was “Seed your initial customer base.”

9 305. Your first group of customers is the foundation of all future growth, so know who  
 10 they’ll be, why they’ll rave and help them tell your story. They’ll first act as role models and then as  
 11 advocates to help spread your mission, so make locating and engaging those core customers a priority.  
 12 This is especially important if you’re introducing something completely new to a traditional  
 13 industry.<sup>339</sup> Despite this professed knowledge that JLI’s “first group of customers is the foundation of  
 14 all future growth” and consistent with Monsees’ position that he has no “qualms” with marketing to  
 15 people that were not yet addicted to nicotine,<sup>340</sup> JLI’s marketing strategy targeted people that were  
 16 “flavor-seeking, social ‘vapers,’” and those who “have very limited experience with traditional tobacco  
 17 cigarettes.”<sup>341</sup>

18 306. JLI’s first major marketing hire, Cult Collective Ltd. (“Cult Collective”), presented a  
 19 pitch deck to JLI in late 2014, which defined the “target consumer” as a person “within a life stage or  
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21  
 22  
 23  
 24 <sup>338</sup> Jacob Kastrenakes, *More teens are vaping instead of smoking*, The Verge (Apr. 16, 2015),  
<https://www.theverge.com/2015/4/16/8429639/teen-ecigarette-use-triples-vaping-beats-smoking>.

25 <sup>339</sup> Scott Dunlap, *6 Ways to Get a Fanatical Customer Base*, Entrepreneur (June 17, 2015)  
<https://www.entrepreneur.com/article/247424>.

26 <sup>340</sup> David H. Freedman, *How do you Sell a Product When You Really Can’t Say What it Does?*, Inc.,  
[https://www.inc.com/magazine/201405/david-freedman/james-monsees-ploom-ecigarette-company-](https://www.inc.com/magazine/201405/david-freedman/james-monsees-ploom-ecigarette-company-marketing-dilemma.html)  
 27 [marketing-dilemma.html](https://www.inc.com/magazine/201405/david-freedman/james-monsees-ploom-ecigarette-company-marketing-dilemma.html) (last visited Apr. 4, 2020).

28 <sup>341</sup> INREJUUL\_00441209.

mindset where they are defining their own identity.”<sup>342</sup> The study described the “modern vaper” as “trendy, sophisticated image managers seeking to balance their desire for originality against acceptance.”<sup>343</sup> Put differently, their target consumer was an adolescent.

307. JLI professedly wanted kids to think JUUL was cool. In an email dated January 29, 2015, Sarah Richardson—then Director of Communications—sent a document dated December 31, 2014, to Dima Martirosyan, Director of Digital Marketing, who forwarded it to Rafael Burde, Director of Ecommerce.<sup>344</sup> The document stated that “[m]ost e-cigarettes to date are unsatisfying and seem ‘douche-y’. The JUUL product delivers nicotine far more effectively, and the product design is elegant and cool. We need to tell this story in a credible fashion through press, influencers and social media.”<sup>345</sup> The document repeatedly referred to Pax Labs’s plan to target the “cool kids[.]”<sup>346</sup> For example, it described as one of the “Key needs” to “Establish premium positioning to entice the ‘masses’ to follow the trend setters; own the ‘early adopter’ / ‘cool kid’ equity as we build out volume[.]”<sup>347</sup> The document noted that “the voices of influencers can build strong demand.”<sup>348</sup> Messaging to media similarly focused on “coolness” and the message that “JUUL singlehandedly made e-cigarettes cool.”<sup>349</sup>

308. This focus on “cool kids” continued up to and after launch. On May 18, 2015, Kate Morgan, field marketing manager, emailed Richard Mumby, Chief Marketing Officer, and a variety of other marketing employees about “Some Music Options for JUUL Party” and noted that one of the

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<sup>342</sup> INREJUUL\_00057298-INREJUUL\_00057487.

<sup>343</sup> INREJUUL\_00057298-INREJUUL\_00057487.

<sup>344</sup> INREJUUL\_00057289.

<sup>345</sup> INREJUUL\_00057293.

<sup>346</sup> *Id.*

<sup>347</sup> *Id.*

<sup>348</sup> *Id.*

<sup>349</sup> INREJUUL 00441325-INREJUUL\_00441326.



options was a pair who were both “cool kids.”<sup>350</sup> On June 7, 2015, Rafael Burde emailed Scott Dunlap, then Chief Operating Officer, stating that the JUUL launch party “was a resounding success (at least in my mind) in terms of winning over the cool kids . . . .”<sup>351</sup> Pax Labs employees used similar wording regarding interest in targeting “cool kids” in an email from Sarah Richardson on August 12, 2015,<sup>352</sup> and emails from Ashley Marand on September 15, 2015,<sup>353</sup> and October 21, 2015.<sup>354</sup> The consistency of the language around this target demographic confirms that marketing to “cool kids” was a company policy set by the executives and the Board, particularly because, before selling the Ploom assets to JTI, James Monsees said similar things about Ploom.<sup>355</sup>

309. JLI identified its competitor in this space as cigarette companies, complaining that “cigarettes continue to own the ‘cool’ equity,” and identifying a “key pillar to go-to-market” as “win[ning] with the ‘cool crowd’” away from cigarettes.<sup>356</sup>

310. With this goal in mind, **JLI hired the Grit Creative Group (“Grit”), which billed itself as an agency whose marketing appealed to “cool kids.”**<sup>357</sup> **Grit helped JLI to “use external audiences to communicate nuanced messages around early adoption ‘coolness’ and product performance.”**<sup>358</sup>

311. In short order, the phrase “it’s cool to JUUL” became an anthem among kids while youth e-cigarette use skyrocketed.

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<sup>350</sup> JLI00218598.

<sup>351</sup> JLI00206206.

<sup>352</sup> JLI00222528.

<sup>353</sup> JLI00461564.

<sup>354</sup> JLI00235965.

<sup>355</sup> JLI00514343 (describing Ploom as “providing optionality for distribution growth and consumer outreach to a younger, opinion leading audience”).

<sup>356</sup> INREJUUL\_00161703-INREJUUL\_00161715.

<sup>357</sup> *Id.*

<sup>358</sup> INREJUUL\_00277080-INREJUUL\_00277104.

**3. JLI Advertising Exploited Young People’s Psychological Vulnerabilities.**

312. Informed by decades of tobacco marketing, JLI ran a consistent, simple message: JUUL is used by young, popular, attractive, and stylish people.

313. This was not the only marketing scheme JLI could have adopted. JLI had other options. In 2014, JLI engaged a Calgary-based advertising agency, Cult Collective, to complete a “diagnostic” evaluation of the JUUL brand and to make recommendations regarding the best advertising strategy to market the JUUL e-cigarette.

314. In keeping with typical e-cigarette marketing, which messaged to existing smokers looking to quit, Cult Collective recommended that JUUL position its e-cigarette technology as the focus of its advertisements. Cult Collective presented JUUL with exemplar advertisements that used images of a boom box and a joy stick, juxtaposed against the JUUL e-cigarette, with the tag line: “Everything changes. JUUL the evolution of smoking.”



315. This campaign expressly invokes combustible cigarettes and positions the JUUL as a technological upgrade for the modern smoker.

316. JLI rejected this approach.

317. Instead, in June of 2015, JLI launched the “Vaporized” advertising campaign.<sup>359</sup> The express mission of the Vaporized campaign was to “own the ‘early adopter’/’cool kid’ equity.”<sup>360</sup>

318. Applying the template for preying on teens established by the cigarette industry, the Vaporized campaign used stylish models, bold colors, and highlighted themes of sexual attractiveness, thinness, independence, rebelliousness and being “cool.”<sup>361</sup>

319. The targeting of young users was evident in the design and implementation of the Vaporized campaign, which featured models in their 20s whose “poses were often evocative of behaviors more characteristic of underage teen than mature adults.”<sup>362</sup>



<sup>359</sup> Declan Harty, *JUUL Hopes to Reinvent E-Cigarette Ads with ‘Vaporized Campaign’*, AdAge (June 23, 2015), <http://adage.com/article/cmo-strategy/juul-hopes-reinvent-e-cigarette-ads-campaign/299142/>.

<sup>360</sup> INREJUUL\_00057291-INREJUUL\_00057295.

<sup>361</sup> See Appendix A, Advertisement 1 (example of targeting of young people).

<sup>362</sup> *Examining Juul’s Role in the Youth Nicotine Epidemic, Hearing Before the H. Comm. on Oversight and Reform, Subcomm. on Econ. and Consumer Policy*, 116th Cong. (2019) (statement of Robert K Jackler, Professor, Stanford University).

<https://docs.house.gov/meetings/GO/GO05/20190724/109844/HHRG-116-GO05-Wstate-JacklerR-20190724.pdf>.



320. In the months leading up to the launch of JUUL e-cigarettes, Pax Labs executives and directors discussed how to market the new product and the Board approved specific marketing materials used in JUUL's launch. On March 23, 2015,<sup>363</sup> there was a meeting of the Board of Directors where the upcoming advertising campaign was discussed.<sup>364</sup> The Board at that time had five members: Pritzker, Valani, Monsees, Bowen, and Handelsman (occupying Valani's second seat). According to Chelsea Kania, then Brand Manager at Pax Labs, prior to this meeting, she had met with the Board to discuss the models who would be used in the marketing collateral accompanying the JUUL launch. At that meeting, "there was some commentary at the youthfulness of the models[,] but "nobody disliked

<sup>363</sup> INREJUUL\_00371285.

<sup>364</sup> INREJUUL\_00371314.

1 them” and “everybody agreed they are pretty ‘effective[.]’”<sup>365</sup> Ms. Kania also noted that she told the  
 2 Board that “we have quite the arsenal of model images to work with, and that they should let us know  
 3 if the ones we selected are going to be problematic. So just waiting on any further feedback if they do a  
 4 pass with the board.”<sup>366</sup> The Management Defendants knew that the ads targeted youth and had the  
 5 authority to determine which models to use, but “Juul’s board of directors signed off on the company’s  
 6 launch plans[.]”<sup>367</sup> In addition, “Monsees, who was CEO at the time, personally reviewed images from  
 7 the billboard photo shoot while it was in session.”<sup>368</sup> A senior manager later told the New York Times  
 8 that “he and others in the company were well aware” that the marketing campaign “could appeal to”  
 9 teenagers.<sup>369</sup>

11 321. As part of the Vaporized campaign, JLI advertised on a 12-panel display over Times  
 12 Square.<sup>370</sup> Billboard advertising of cigarettes has for years been unlawful under the Master Settlement  
 13 Agreement.  
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 21 <sup>365</sup> INREJUUL\_00174387.

22 <sup>366</sup> *Id.*

23 <sup>367</sup> Ainsley Harris, *How Juul, founded on a life-saving mission, became the most embattled startup of*  
 24 *2018: E-cigarette startup Juul Labs is valued at more than \$16 billion. It’s also hooking teens on*  
*nicotine and drawing scrutiny from the FDA. Can the company innovate its way out of a crisis it*  
*helped create?*, Fast Company (Nov. 19, 2018), [https://www.fastcompany.com/90262821/how-juul-](https://www.fastcompany.com/90262821/how-juul-founded-on-a-life-saving-mission-became-the-most-embattled-startup-of-2018)  
*helped create?*, Fast Company (Nov. 19, 2018), [https://www.fastcompany.com/90262821/how-juul-](https://www.fastcompany.com/90262821/how-juul-founded-on-a-life-saving-mission-became-the-most-embattled-startup-of-2018)

25 <sup>368</sup> *Id.*

26 <sup>369</sup> Matt Richtel & Sheila Kaplan, *Did Juul Lure Teenagers and Get ‘Customers for Life’?*, N.Y. Times  
 (Aug. 27, 2018), <https://www.nytimes.com/2018/08/27/science/juul-vaping-teen-marketing.html>.

27 <sup>370</sup> See Appendix A, image 14; see also <https://inrejuul.myportfolio.com> (also available at  
 28 [http://tobacco.stanford.edu/tobacco\\_main/subtheme\\_pods.php?token=fm\\_pods\\_mt068.php](http://tobacco.stanford.edu/tobacco_main/subtheme_pods.php?token=fm_pods_mt068.php)) (last  
 visited April 3, 2020) (additional images and videos).





322. These ads, which ran for nearly a month, generated an estimated 1.5 million impressions per day.<sup>371</sup>

323. In fact, JLI's Vaporized campaign was so effective that it gained national attention on an October 15th, 2015 episode of Late Night with Stephen Colbert, who ridiculed the notion that the young, dancing models were consistent with a target market of adult smokers. As Colbert joked after viewing the close-up video of young models dancing in place, "[y]eah! There is something about vaping that just makes me want to dance in a way that doesn't require much lung strength. . . . And it's not just ads featuring hip young triangles that appeal to the youths. . . . There is no reason to worry about the long-term effects of vaping, because e-cigarettes are so new that their long-term effects are still unknown."<sup>372</sup>

<sup>371</sup> INREJUUL\_00093933-INREJUUL\_00093934.

<sup>372</sup> *The Late Show With Stephen Colbert: Vaping is So Hot Right Now*, YouTube (Oct. 7, 2015), [https://www.youtube.com/watch?v=PMtGca\\_7leM](https://www.youtube.com/watch?v=PMtGca_7leM).

324. The Vaporized campaign was not limited to the Times Square billboards however. The ads were also placed in nationally-distributed magazines, and the videos were displayed on screens at the top of point-of-sale JUUL kiosks provided by JUUL to retailers across the country.

325. To the extent that the Vaporized advertisements disclosed that JUUL contained nicotine, the warnings were in small print against low-contrast backgrounds, making them easy to overlook. By way of comparison, cigarette advertisements, are required to display a health warning in high contrast black and white, covering 20% of the image.

326. Likewise, JLI's social media ads did not disclose any health risks of using JUUL until May of 2018, when they were required to warn of addiction. But even then, JUUL placed these warnings in areas that were only viewable if the social media user clicked on the "full version" of the JLI post, which is not how teens typically engage with social media advertising.<sup>373</sup> Notably, on Twitter, a social media platform that is geared towards reading text, and on Facebook, where some users do read text, JLI typically did not include the disclaimer in its advertisements at all.<sup>374</sup>

#### **4. JLI Pushed the Vaporized Campaign Into Youth Targeted Channels.**

##### **a. JLI Placed Its Vaporized Ads on Youth Oriented Websites and Media.**

327. JLI engaged programmatic media buyers to place advertisements on websites attractive to children, adolescents in middle school and high school, and underage college students. These advertisements, which included the images of models from the Vaporized campaign, began appearing on websites as early as June 2015. The chosen websites included: nickjr.com (the website for a children's television network run by Nickelodeon Group); the Cartoon Network's website at cartoonnetwork.com; allfreekidscrafts.com; hellokids.com; and kidsgameheroes.com.

<sup>373</sup> See Appendix A, Advertisement 3.

<sup>374</sup> See Appendix A, Advertisement 65; *see also* Juul Image Galleries (2015-2018) SRITA Collection, <https://inrejuul.myportfolio.com/twitter-1> (last visited Apr. 3, 2020).



328. A picture of the homepage of nickjr.com is below:



329. JLI also purchased banner advertisements on websites providing games targeted to younger girls,<sup>375</sup> educational websites for middle school and high school students,<sup>376</sup> and other teen-targeted websites.<sup>377</sup>

330. JLI knew what it was doing. In May 2015, Chelsea Kania contacted Cult Collective to raise concerns about advertising on younghollywood.com. Kania explained that the website's demographics are "age 12-34 . . . and weighing the % who could actually afford JUUL against the risk we'd run being flagged for advertising on that site – I don't think we should do it."<sup>378</sup> Nevertheless, JLI continued to push its campaign on websites with young demographics.

331. JLI promoted the Vaporized campaign on Facebook, Instagram, and Twitter.

<sup>375</sup> The sites included dailydressupgames.com, didigames.com, forhergames.com, games2girls.com, girlgames.com, and girlsgogames.com.

<sup>376</sup> E.g., coolmath-games.com. JUUL also purchased advertisements on basic-mathematics.com, coolmath.com, math-aids.com, mathplayground.com, mathway.com, onlinemathlearning.com, and purplemath.com.

<sup>377</sup> E.g., teen.com, seventeen.com, justjaredjr.com, and hireteen.com. JUUL purchased advertisements on websites for high school students hoping to attend college such as collegeconfidential.com and collegeview.com.

<sup>378</sup> INREJUUL\_00082179-INREJUUL\_00082185.

332. JLI could have employed age-gating on its social media accounts to prevent underage users from viewing its Vaporized advertisements, but chose not to do so.

333. The Vaporized campaign included the largest e-cigarette smartphone campaign of 2015, which accounted for 74% of all such smartphone advertising that year.

334. JLI promoted Vaporized through Vice Magazine, which bills itself as the “#1 youth media brand” in the world.<sup>379</sup>



335. By 2016, an estimated 20.5 million U.S. middle and high school students were exposed to advertisements for e-cigarettes, including JUUL.<sup>380</sup>

**b. JLI Used Influencers and Affiliates to Amplify Its Message to a Teenage Audience.**

336. JLI used “influencers” to push their product to young people. Influencers are “high-social net worth” individuals who have developed large social media followings—*i.e.*, the “cool kids”

<sup>379</sup> Kathleen Chaykowski, *The Disturbing Focus of Juul’s Early Marketing Campaigns*, Forbes (Nov. 16, 2018), <https://www.forbes.com/sites/kathleenchaykowski/2018/11/16/the-disturbing-focus-of-juuls-early-marketing-campaigns/#3da1e11b14f9>.

<sup>380</sup> Kristy Marynak et al., *Exposure to Electronic Cigarette Advertising Among Middle and High School Students – United States, 2014-2016*, CDC: Morbidity and Mortality Weekly Report (Mar. 16, 2018), <https://www.cdc.gov/mmwr/volumes/67/wr/mm6710a3.htm>.

1 of the social media world.<sup>381</sup> Influencers are prized sources of brand promotion on social media  
 2 networks.

3 337. Like its Vaporized campaign, JLI's influencer strategy was youth-focused, with the  
 4 stated aim of "show[ing] that the tastemakers, cool kids and early adopters who consume tobacco use  
 5 JUUL."<sup>382</sup> In keeping with this strategy, JLI targeted influencers that were young and popular with  
 6 adolescents. One influencer JLI targeted was Tavi Gevinson, who was nineteen years old in the  
 7 summer of 2015. The year before, Rolling Stone magazine described Gevinson as "possibly the most  
 8 influential 18-year-old in America."<sup>383</sup>

10 338. JLI contracted with Grit to enlist influencers by sending them free JUUL e-cigarettes.  
 11 Documents obtained pursuant to a Congressional investigation show that in July 2015, JLI's contract  
 12 with Grit was for services that included "Influencer Relations," in which Grit agreed to provide two  
 13 "Social Buzzmakers" for six events within a four-week period, with each Social Buzzmaker having a  
 14 minimum of 30,000 followers and be active on at least two social media channels, such as Instagram,  
 15 Twitter, or Facebook. The contract provided that JLI would determine or approve the timing of the  
 16 Buzzmakers' posts. In addition, JLI engaged Grit to "develop influencer engagement efforts to  
 17 establish a network of creatives to leverage as loyalists for Juul/Pax brand activations."<sup>384</sup>  
 18  
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22 <sup>381</sup> See INREJUUL\_00091138 (Aug. 26, 2015 "JLI Influencer Program" defining an influencer as  
 23 "individuals who have strong influence over their audience. We are aiming for influencers in popular  
 24 culture with large audiences in various sectors such as music, movies, social, pop media, etc.").

25 <sup>382</sup> INREJUUL\_00057293.

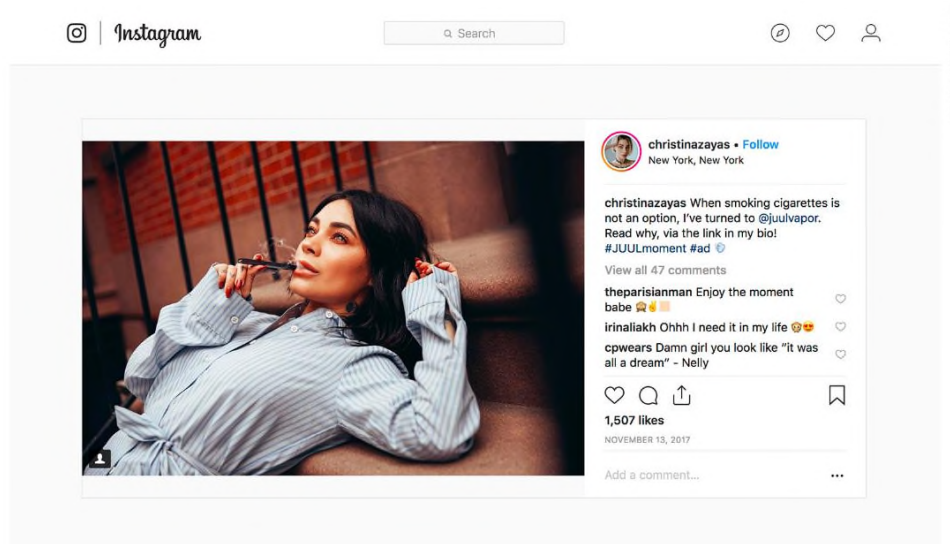
26 <sup>383</sup> Alex Morris, *Tavi Gevinson: A Power Teen's New Direction*, Rolling Stone (Aug. 14, 2014),  
 27 <https://www.rollingstone.com/culture/culture-features/tavi-gevinson-a-power-teens-new-direction-232286/>.

28 <sup>384</sup> Kenrick Cai, *Juul Funded High Schools, Recruited Social Media Influencers To Reach Youth, House Panel Charges*, Forbes (July 25, 2019),  
<https://www.forbes.com/sites/kenrickcai/2019/07/25/juul-high-schools-influencers-reach-youth-house-investigation/#57735a4a33e2>. See JLI-HOR-00042050-052 at 050.

339. Grit also provided free JUULs to Luka Sabbat, known as the “the Internet’s Coolest Teenager,”<sup>385</sup> who was 17 years old during the summer of 2015.

340. Grit targeted celebrities with large numbers of underage fans, including Miley Cyrus, former star of “Hannah Montana,” a series that aired for four seasons on the Disney Channel and won eight Teen Choice Awards.<sup>386</sup>

341. JLI paid these social media influencers to post photos of themselves with JUUL devices and to use the hashtags that it was cultivating.<sup>387</sup> One such influencer was Christina Zayas, whom JLI paid \$1,000 for just one blog post and one Instagram post in the fall of 2017.



342. JLI encouraged its distributors, wholesalers, and other resellers—either explicitly or implicitly— to hire affiliates and influencers to promote JLI’s brand and products. Even if not paid directly by JLI, these influencers profited from the promotion of JUUL products either because they were paid by JUUL resellers, JUUL accessory sellers, or sellers of JUUL-compatible products.

<sup>385</sup> Alexis Barnett, *Who Is Luka Sabbat? Meet the Internet’s Coolest Teenager*, Complex (Aug. 17, 2015), <https://www.complex.com/style/luka-sabbat-interview-on-youth-kanye-west-and-fashion>.

<sup>386</sup> See, INREJUUL\_00091141 (Aug. 26, 2015 “JLI Influencer Seeding Chart” provided by Grit listing various celebrities and influencers, including Miley Cyrus.).



343. For example, one YouTube user Donnysmokes (Donny Karle, age twenty-one) created a JUUL promotional video in 2017 that garnered roughly 52,000 views, many of which were from users under the age of eighteen.<sup>388</sup> Since that time, Karle has made a series of videos, including videos titled “How to hide your JUUL from your parents” and “How to HIDE & HIT Your JUUL at SCHOOL WITHOUT Getting CAUGHT.”<sup>389</sup> Karle has admitted to earning approximately \$1200 a month from unspecified sources simply from posting videos of himself consuming e-cigarettes, especially of JUUL products online.<sup>390</sup>

344. Karle also created a YouTube sensation called the “JUUL Challenge,” which is a play on the viral “Ice Bucket Challenge.” In the JUUL Challenge, the goal is to suck down as much nicotine as possible within a predetermined amount of time. The JUUL Challenge, which promotes nicotine abuse and adolescent use of JUUL products, went viral like the Ice Bucket Challenge it mimicked. Soon, youth across the country were posting their own JUUL Challenge videos, a practice that continues to this day on YouTube, Instagram, Snapchat and other social media platforms. In one recent JUUL Challenge on YouTube, which has received nearly 500,000 views, the two teenagers filming themselves discussing the hundreds of thousands of views their prior JUUL Challenge received and comment upon the “virality” of their JUUL Challenge content.<sup>391</sup>

<sup>388</sup> *Examining Juul’s Role in the Youth Nicotine Epidemic, Hearing Before the H. Comm. on Oversight and Reform, Subcomm. on Econ. and Consumer Policy*, 116th Cong. (2019) (statement of Robert K. Jackler, Professor, Stanford University).

<https://docs.house.gov/meetings/GO/GO05/20190724/109844/HHRG-116-GO05-Wstate-JacklerR-20190724.pdf>.

<sup>389</sup> *Id.*

<sup>390</sup> Allie Conti, *This 21-year-old is Making Thousands a Month Vaping on YouTube*, Vice (Feb. 5, 2018), [https://www.vice.com/en\\_us/article/8xvjmk/this-21-year-old-is-making-thousands-a-month-vaping-on-youtube](https://www.vice.com/en_us/article/8xvjmk/this-21-year-old-is-making-thousands-a-month-vaping-on-youtube).

<sup>391</sup> Nate420, JUUL Challenge (Apr. 22, 2018), [https://youtu.be/gnM8hqW\\_2oo](https://youtu.be/gnM8hqW_2oo) (last visited Mar. 30, 2020).

345. In or around 2017, JLI began using a company called Impact Radius for the management of JLI's affiliate program. Impact Radius's affiliate application stated that JLI "auto-approve[d]" applications and did not ask for or confirm the affiliate's age.<sup>392</sup> JLI's affiliates promoted JUUL on social media platforms including YouTube, Instagram, Facebook, Snapchat, and Twitter and routinely failed to disclose that they were being paid to promote JUUL products.

346. JLI's "affiliate program" recruited those who authored favorable reviews of its products by providing such reviewers with a 20% discount of purchases of JUUL products.<sup>393</sup> It even recruited JUUL users to act as part of their marketing team by asking users to "refer a friend and get a discount."<sup>394</sup>

347. As with much of the marketing strategy for JUUL, the practices described above are prohibited by the Master Settlement Agreement.

**c. JLI Used Viral Marketing Techniques Known to Reach Young People.**

348. JLI deployed "viral marketing" techniques to great success. Viral marketing is defined as "marketing techniques that seek to exploit pre-existing social networks to produce exponential increases in brand awareness, through processes similar to the spread of an epidemic."<sup>395</sup> Viral marketing effectively converts customers into salespeople, who, by sharing their use of a product (on social media or otherwise), repeat a company's representations and endorse the product within their

<sup>392</sup> INREJUUL\_00113437-INREJUUL\_00113441.

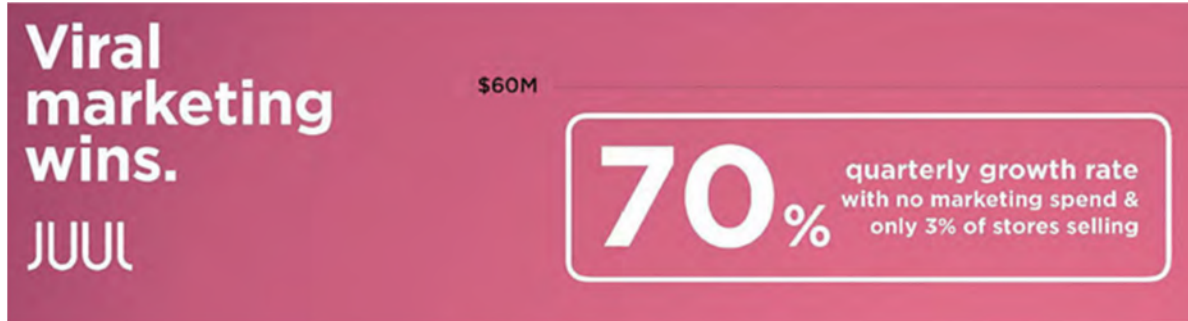
<sup>393</sup> *Examining Juul's Role in the Youth Nicotine Epidemic, Hearing Before the H. Comm. on Oversight and Reform, Subcomm. on Econ. and Consumer Policy*, 116th Cong. (2019) (statement of Robert K Jackler, Professor, Stanford University), <https://docs.house.gov/meetings/GO/GO05/20190724/109844/HHRG-116-GO05-Wstate-JacklerR-20190724.pdf>.

<sup>394</sup> *Id.* at 9.

<sup>395</sup> N. Deepa et al., *Viral Marketing as an On-Line Marketing Medium*, IOSR J. of Bus. & Mgmt. 18, <http://www.iosrjournals.org/iosr-jbm/papers/ncibppte-volume-2/1115.pdf> (last visited Apr. 3, 2020); P. R. Datta et al., *Viral Marketing: New Form of Word-of-Mouth Through Internet*, 3 The Bus. Rev. 69 (2005).

network. The success of viral marketing depends on peer-to-peer transmission. Hence, a successful viral marketing campaign looks like a series of unrelated, grassroots communications, when in fact they are the result of carefully orchestrated corporate advertising campaigns.

349. As JLI boasted in a pitch deck to potential investors dated December 2016, “Viral Marketing Wins.”<sup>396</sup>



350. Social media platforms are the most effective way to launch viral marketing campaigns among young people. As of May 2018, among teenagers, 95% reported use of a smart phone, 85% use YouTube, 72% use Instagram, and 45% reported being online “constantly.”<sup>397</sup>

351. A key feature of JLI’s viral marketing campaign was inviting user-generated content. This strategy revolves around prompting social media followers to provide their own JUUL-related content—e.g., post a selfie in your favorite place to use JUUL. The response provided by a user is then typically distributed—by the social media platform employed—into the user’s personal network. In this way, brands can infiltrate online communities with personalized content that promotes their product (e.g. a picture of a friend using a JUUL e-cigarette ).<sup>398</sup>

<sup>396</sup> INREJUUL\_00349529-560 at 541.

<sup>397</sup> Monica Anderson & Jingjing Jiang, *Teens, Social Media & Technology 2018: Appendix A: Detailed Tables*, Pew Research Center (May 31, 2018),

<https://www.pewresearch.org/internet/2018/05/31/teens-technology-appendix-a-detailed-tables/>.

<sup>398</sup> *The Rise in the Use of Juul Among Young People: The Power of Design and Social Media Marketing*, Campaign for Tobacco Free Kids,

[https://www.tobaccofreekids.org/assets/images/content/JUUL\\_Presentation.pdf](https://www.tobaccofreekids.org/assets/images/content/JUUL_Presentation.pdf).





352. Within a few months of the JLI's commercial release in June 2015, a former JLI executive reportedly told the New York Times that JLI "quickly realized that teenagers were, in fact, using [JUULs] because they posted images of themselves vaping JUULs on social media."<sup>399</sup>

353. To drive consumer participation in its ad campaign, JLI peppered its advertising and social media posts with hashtags, including those referencing JLI and consuming e-cigarettes (e.g., #juul, #juulvapor, #switchtojuul, #vaporized, #juulnation, #juullife, #juulmoment); and trending topics unrelated to JUUL, as well as topics #mothersday, #goldenglobes, #nyc, etc. JLI's hashtag marketing went beyond passive posts to being "very proactive to find and reach out to people who are (or might

<sup>399</sup> Matt Richtel & Sheila Kaplan, *Did Juul Lure Teenagers and Get 'Customers for Life'?*, N.Y. Times (Aug. 27, 2018), <https://www.nytimes.com/2018/08/27/science/juul-vaping-teen-marketing.html>.

be) interested in JUUL. This means searching hashtags to engage, using widely used hashtags, paying close attention to our followers, being responsive to posts, etc.”<sup>400</sup>



354. JLI’s hashtags attracted an enormous community of youthful posts on a wide array of subjects. According to Dr. Jackler, #Juul contains literally thousands of juvenile postings, and numerous Instagram hashtags contain the JUUL brand name.<sup>401</sup>

355. Just as JLI intended, JUUL users began taking photos of themselves using JUUL devices and putting them on social media with the hashtag #juul. They were creating JUUL content that looked and felt like real JUUL ads: featuring young people having fun and using JUUL. The flavor-based hashtag campaigns #MangoMonday and #coolmint generated hundreds of thousands of user-generated posts.

356. JLI could have stepped in and attempted to stop the use of its trademark in posts directed to underage audiences, including the use of all the hashtags that contain the word “JUUL.” It

<sup>400</sup> INREJUUL\_00093294.

<sup>401</sup> Robert K. Jackler et al., *JUUL Advertising Over Its First Three Years on the Market* at 2, STAN. RES. INTO THE IMPACT OF TOBACCO ADVERT. (2019), [http://tobacco.stanford.edu/tobacco\\_main/publications/JUUL\\_Marketing\\_Stanford.pdf](http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf).

1 could have promptly sought to shut down infringing accounts such as @doit4juul and @JUULgirls. It  
2 did not do so.

3 **5. JLI Targeted Youth Retail Locations.**

4 357. Studies show that tobacco use is associated with exposure to retail advertising and  
5 relative ease of in-store access to tobacco products. Some studies have shown that youth who were  
6 frequently exposed to point of sale tobacco marketing were twice as likely to try or initiate smoking  
7 than those who were not as frequently exposed.  
8

9 358. For years, JLI made it difficult for smoke shops and other age-restricted stores to carry  
10 its products, instead directing its product to gas stations and convenience stores, which historically  
11 make the most underage sales. JLI knows that nicotine-naïve young people frequent gas stations and  
12 convenience stores rather than smoke shops. By distributing in those kinds of stores, JUUL increased  
13 the likelihood that these people would purchase its product.  
14

15 359. JLI marketed its products extensively in convenience stores, employing video and  
16 product displays with bright colors and young adults using and displaying the JUUL device. The retail  
17 marketing worked and, by late 2017, JUUL became the most popular e-cigarette sold in convenience  
18 stores according to Nielsen data.<sup>402</sup>

19 360. Like all in-store cigarette advertising, JLI's point-of-sale materials played a major role  
20 in driving youth addiction. JLI actively encouraged youth to seek out these laxly regulated retail  
21 locations, sending marketing e-mails to hundreds of thousands of customers, referring them to the  
22 JUUL store locator and offering discounts. And JLI actively encouraged its retailers to leniently  
23  
24  
25

26 <sup>402</sup> Laura Bach, *JUUL and Youth: Rising E-Cigarette Popularity*, Campaign for Tobacco-Free Kids  
27 (July 6, 2018), [http://www.kdheks.gov/tobacco/download/Campaign\\_for\\_tobacco-  
28 free\\_kids\\_rising\\_popularity\\_of\\_e-cigarettes.pdf](http://www.kdheks.gov/tobacco/download/Campaign_for_tobacco-free_kids_rising_popularity_of_e-cigarettes.pdf).

regulate sales to youth by providing profit margins that far exceeded any other tobacco product being sold.

361. Before JUUL's launch in 2015, JLI and Cult Collective developed packaging and in-store displays that looked similar to iPhone packaging, which JLI knew would resonate with young people and further JLI's campaign to be the "the iPhone of e-cigarettes."

362. As a 2015 marketing plan shows, JLI's in-store promotional content "stands out" from competing tobacco products by conveying that the "JUUL brand is colorful, approachable, and fun—core elements of trade support assets."<sup>403</sup>



## 6. JLI Hosted Parties to Create a Youthful Brand and Gave Away Free Products to Get New Users Hooked.

363. JLI also sponsored at least twenty-five live social events for its products in California, Florida, New York, and Nevada. The invitations to JUUL's events did not indicate that the JUUL was intended for cigarette smokers, contained nicotine, or was addictive.<sup>404</sup> Instead, the invitations traded on PAX Lab, Inc.'s (PAX) reputation as a manufacturer of marijuana vaporizers and promised

<sup>403</sup> INREJUUL\_00370796-INREJUUL\_00370806, 805.

<sup>404</sup> See Appendix A, Advertisements 78-81.

attendees “free #JUUL starter kit[s],” live music, or slumber parties.<sup>405</sup> Photographs from these events indicate that they drew a youthful crowd. Product promotion through sponsored events was a long-standing practice for cigarette companies, but is now prohibited.



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<sup>405</sup> *Id.*





364. At these live social events, JLI gave attendees free JUUL “Starter Kits,” which contain a JUUL device and 4 JUUL pods of various flavors. JLI gave away samples at music events without age restrictions, including Outside Lands in San Francisco’s Golden Gate Park, and other events aimed at a youthful audience, such as the annual Cinespia “Movies All Night Slumber Party” in Los Angeles. These events, in addition to providing youthful crowds for handing out samples, were opportunities for JLI to cultivate its brand image as youthful, hip, and trendy—but had nothing to do with smoking cessation. For example, on August 7, 2015, JLI tweeted, “Need tix for @cinespia 8/15? We got you. Follow us and tweet #JUULallnight and our faves will get a pair of tix!”<sup>406</sup>

365. Giving away free samples is prohibited conduct for a cigarette company under the Master Settlement Agreement.

366. As part of the Vaporized campaign, JLI also emulated trendy pop-up restaurants and stores by using a shipping container “pop-up JUUL bar” at festivals and events in the Los Angeles and

1 New York City metro areas. The firm BeCore designed and created the container for JLI and managed  
 2 it as a mobile JUUL product sampling lounge.<sup>407</sup>



Juul's container bar

408

367. JLI also held sampling events in stores. By September 2015, JLI was on schedule to  
 host sampling events in more than 5,000 stores in twenty cities in twelve states.<sup>409</sup> Documents obtained  
 by the New York Attorney General show that JLI recruited young “brand ambassadors” to staff these  
 events and required a dress code that included skinny jeans, high-top sneakers or booties, and an  
 iPhone in a JUUL-branded case.<sup>410</sup>

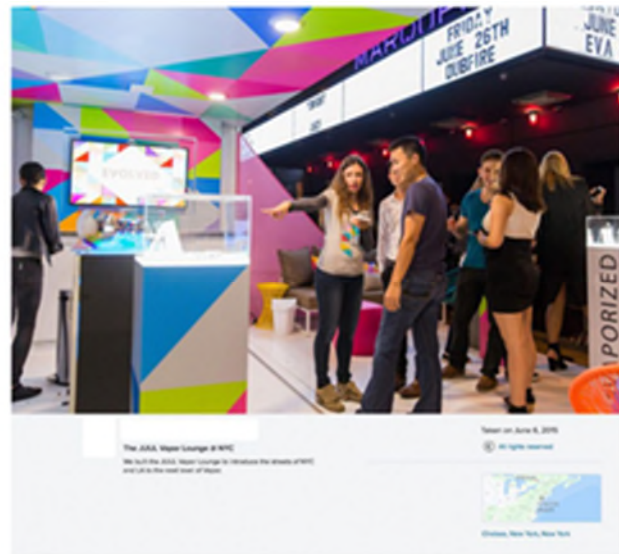
<sup>407</sup> Robert K. Jackler et al., *JUUL Advertising Over Its First Three Years on the Market*, Stanford Research Into the Impact of Tobacco Advertising 9 (Jan. 31, 2019), [http://tobacco.stanford.edu/tobacco\\_main/publications/JUUL\\_Marketing\\_Stanford.pdf](http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf).

<sup>408</sup> Declan Harty, *JUUL Hopes to Reinvent E-Cigarette Ads with ‘Vaporized Campaign’*, AdAge (June 23, 2015), <http://adage.com/article/cmo-strategy/juul-hopes-reinvent-e-cigarette-ads-campaign/299142/>.

<sup>409</sup> INREJUUL\_00160394.

<sup>410</sup> Jake Offenhartz, *Juul Hooked Teens Through Sick Parties and Hip Ambassadors*, NY AG Says, Gothamist (Nov. 19, 2019), <https://gothamist.com/news/juul-hooked-teens-through-sick-parties-and-hip-ambassadors-ny-ag-says>; Kathleen Chaykowski, *The Disturbing Focus of Juul’s Early Marketing Campaigns*, Forbes (Nov. 16, 2018), <https://www.forbes.com/sites/kathleenchaykowski/2018/11/16/the-disturbing-focus-of-juuls-early-marketing-campaigns/#3da1e11b14f9>.





369. Though JLI publicly acknowledged in October 2017 that it is unlawful to distribute free samples of its products at live events,<sup>412</sup> it continued to reach out to new users by offering samples, sometimes at \$1 “demo events.” Like so many of JLI’s initiatives, promotions of this kind are prohibited for cigarette companies by the Master Settlement Agreement.

<sup>412</sup> See Nik Davis (@bigbabynik), Twitter (Nov. 17, 2017 1:11 PM), <https://twitter.com/JLIvapor/status/931630885887266816>; The Role of the Company in the Juul Teen Epidemic, Examining Juul’s Role in the Youth Nicotine Epidemic, Hearing Before the H. Comm. on Oversight and Reform, Subcomm. on Econ. and Consumer Policy, 116th Cong. (2019) (statement of Robert K Jackler, Professor, Stanford University). <https://docs.house.gov/meetings/GO/GO05/20190724/109844/HHRG-116-GO05-Wstate-JacklerR-20190724.pdf>.

370. The effect—and purpose—of JLI’s Vaporized giveaways was to flood major cities with products that would hook thousands of new users, and to generate buzz for the brand among urban trendsetters who would then spread JLI’s message to their friends via word of mouth and social media.

371. According to BeCore, one of the firms responsible for designing and implementing JLI’s live events, JLI distributed the nicotine-equivalent of approximately 500,000 packs of cigarettes at all twenty-five events.<sup>413</sup> And this was just to get people started.

**7. The Management Defendants’ Direction of and Participation in JLI and in the Youth Marketing Schemes.**

**a. The Management Defendants, and in particular Pritzker, Valani, and Huh, controlled JLI’s Board at relevant times.**

372. During the relevant time frame, JLI’s operative Voting Agreements provided for a maximum of seven board seats.<sup>414</sup> By March 2013, Valani, through Ploom Investments LLC, controlled two of JLI’s maximum seven board seats.<sup>415</sup> Valani continued to control two JLI board seats at all relevant times. Pritzker joined Monsees, Bowen, and Valani on JLI’s board in August 2013.<sup>416</sup>

373. In March 2015, after JTI’s board appointees resigned, Hank Handelsman—a lawyer who serves as general counsel for the Pritzker Organization, and was a senior executive officer and general counsel for the Hyatt Corporation for several decades—joined Monsees, Bowen, Pritzker, and Valani on JLI’s board.<sup>417</sup> JLI documents indicate that Handelsman occupied Valani’s second seat on

<sup>413</sup> Robert K. Jackler et al., *JUUL Advertising Over Its First Three Years on the Market*, Stanford Research Into the Impact of Tobacco Advertising 9 (Jan. 31, 2019),

[http://tobacco.stanford.edu/tobacco\\_main/publications/JUUL\\_Marketing\\_Stanford.pdf](http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf).

<sup>414</sup> JLI01362389 (Fifth Amended and Restated Voting Agreement, March 2015); JLI01362388 (Fifth Amended and Restated Voting Agreement, Dec 2016); JLI01439393 (Sixth Amended and Restated Voting Agreement, March 2017); JLI01440777 (Seventh Amended and Restated Voting Agreement, Jun 2018).

<sup>415</sup> JLI01426710 (March 25, 2013 board minutes note V has seats, discuss a potential designee by Ploom Investments/aka V); JLI0268480 (“Ploom Investments is controlled by Riaz Valani”).

<sup>416</sup> JLI01426164.

<sup>417</sup> JLI00216307; JLI01365707

1 the board.<sup>418</sup> Thus, by March 2015, Pritzker and Valani controlled three board seats, which comprised  
 2 a majority of the board at the time since only five of seven possible seats were filled then. And  
 3 Defendants Monsees and Bowen held the other two board seats.

4  
 5 374. JLI's Fourth Amended and Restated Voting Agreement, dated March 2015, provided  
 6 for a maximum of seven board seats. Monsees and Bowen each occupied one seat; Valani had two  
 7 seats; Pritzker had one seat at that time; another investor would obtain one board seat if enough shares  
 8 were raised (but ultimately, they were not), and one seat was to be filled by vote of a majority of the  
 9 board.<sup>419</sup> Sometime after that, Pritzker assumed control of a second board seat.

10 375. By the summer of 2015, Hoyoung Huh and Alexander Asseily joined the Board. At that  
 11 time, the Board had seven members: Monsees, Bowen, Valani, Pritzker, Handelsman, Huh, and  
 12 Asseily.<sup>420</sup> Handelsman continued to occupy Valani's second seat.

13  
 14 376. Valani, Pritzker, and Huh continued to control JLI's board through at least 2018. In  
 15 June 2017, Altria was already contemplating a deal with JUUL and asked its financial advisor, Perella  
 16 Weinberg Partners, to conduct diligence on JLI. Altria reported Perella Weinberg's findings while  
 17 preparing for a meeting with JLI, noting that "Valani and Pritzker control majority of voting power and  
 18 44% economic interests."<sup>421</sup>

19 377. JLI's December 2016 Fifth Amended and Restated Voting Agreement provided that  
 20 Monsees and Bowen controlled the two seats they occupied; Valani controlled the two seats occupied  
 21 at that time by himself and Handelsman; Pritzker controlled the two seats occupied at that time by  
 22 himself and Asseily; and Huh occupied the seat appointed by a majority of board members.<sup>422</sup> JLI's  
 23

24  
 25 <sup>418</sup> JLI01362388.

26 <sup>419</sup> JLI01365707

27 <sup>420</sup> JLI00220992

28 <sup>421</sup> ALGAT0002834151.

<sup>422</sup> JLI01362388

1 March 2017 Sixth Amended and Restated Voting Agreement provided the same board seat  
2 composition as the Fifth.<sup>423</sup>

3 378. Even after Huh resigned from JLI's board in May 2018,<sup>424</sup> Pritzker and Valani  
4 continued to control the board, as they still controlled four of seven board seats. JLI's June 2018  
5 Seventh Amended and Restated Voting Agreement provided that Monsees and Bowen controlled the  
6 two seats they occupied; Valani controlled the two seats occupied at that time by himself and  
7 Handelsman; Pritzker controlled the two seats occupied at that time by himself and Zach Frankel; and  
8 Kevin Burns occupied the seat appointed by a majority of board members.<sup>425</sup> Consistent with this  
9 distribution of board seats, an internal Altria presentation from October 2017 reported on Altria's  
10 "continued dialogue with key [JLI] investors," noting that Valani and Pritzker "indicate that they  
11 control majority of voting power."<sup>426</sup> JLI also noted in 2017 and 2018 that Pritzker and Valani "have  
12 two board seats" each, and they "are active on the board as well as providing strategic advice to the  
13 company on a weekly basis."<sup>427</sup>

14 379. The Bylaws of the JLI Board of Directors provide that "all questions and business shall  
15 be determined by the vote of a majority of the directors present, unless a different vote be required by  
16 law, the Certificate of Incorporation or these bylaws."<sup>428</sup> So, by virtue of their control of four of the  
17 seven seats on the JLI Board of Directors, Defendants Pritzker and Valani had the ability to approve or  
18 reject any matter considered by the Board of Directors. This power included, among other things, the  
19 decision to remove any officer of JLI (which only required an "affirmative vote of a majority of the  
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25 <sup>423</sup> JLI01439394

26 <sup>424</sup> JLI01425021

27 <sup>425</sup> JLI01440776

28 <sup>426</sup> ALGAT0000280623

<sup>427</sup> JLI01356230; JLI01356237 (Nov. 2017); JLI00417815 (Feb. 2018)

<sup>428</sup> JLI01385478

directors” – which, as stated above, rested with Pritzker and Valani during all relevant times).<sup>429</sup> In this way, Pritzker and Valani ensured JLI would be run as they saw fit.

**b. Pritzker, Huh, and Valani were active, involved board members.**

380. JLI’s board members, and especially Pritzker, Valani, and Huh, were “more involved than most.”<sup>430</sup> In June 2015, then-COO Scott Dunlap observed that “[o]ur board members are more involved than most, and likely crazier than most, given the depth of experience they have in this industry,” specifically referencing comments made by Pritzker and Valani about JLI’s Vaporized marketing campaign.<sup>431</sup> They were so involved, in fact, that Dunlap worried that “the board [will] try and write copy” for future branding changes, and he encouraged Richard Mumby to prepare branding materials in advance so that “we could lead that discussion, should it happen.”<sup>432</sup> (Dunlap’s efforts to wrestle control over marketing from Pritzker, Valani, and Huh failed—he was the first person fired when their Executive Committee began to clean house, as discussed below.)<sup>433</sup>

381. JLI’s board met far more frequently than is typical: they had *weekly* board calls in addition to monthly meetings.<sup>434</sup> Hoyoung Huh began joining these weekly board calls starting in May 2015, before he formally took a seat on the board.<sup>435</sup> In the months following JUUL’s June 2015 launch, the youth appeal of JUUL’s marketing became a “common conversation” at weekly board calls.<sup>436</sup> Weekly meetings continued into at least 2018. JLI told investors in 2017 and 2018 that Pritzker and Valani “are active on the board as well as providing strategic advice to the company on a

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<sup>429</sup> *Id.*

<sup>430</sup> JLI00206239

<sup>431</sup> *Id.*

<sup>432</sup> *Id.*

<sup>433</sup> JLI01369470

<sup>434</sup> *See, e.g.*, JLI00210436; JLI00380098

<sup>435</sup> JLI00206172.

<sup>436</sup> INREJUUL\_00174498

1 weekly basis.”<sup>437</sup> Then-CEO Tyler Goldman told an investor in June 2017 that “Nick [Pritzker] has  
 2 been a driving force in the building the [JLI] business.”<sup>438</sup>

3 **c. The Management Defendants, and in particular Bowen, Monsees, Pritzker,**  
 4 **Valani, and Huh, oversaw and directed the youth marketing scheme.**

5 382. The Management Defendants were well aware that JUUL branding was oriented toward  
 6 teens and duplicated earlier efforts by the cigarette industry to hook children on nicotine. The  
 7 Management Defendants directed and approved JUUL branding to be oriented toward teenagers. The  
 8 Management Defendants directed and participated in every marketing campaign pushing the JUUL e-  
 9 cigarette, as they had “final say” over all marketing campaigns (including the Vaporized campaign and  
 10 the other formal and informal marketing efforts described above),<sup>439</sup> and Monsees provided specific  
 11 direction on the content of the website to JLI employees.  
 12

13 383. James Monsees testified to Congress in 2019 that the Board of Directors had “final say”  
 14 over marketing campaigns, and he was not speaking to only the current state of affairs at the time. As  
 15 noted above, from 2015 on, JLI’s own documents establish that the Board of Directors closely  
 16 reviewed and approved marketing plans and specific marketing materials, and set the marketing  
 17 strategy for the company.  
 18

19 384. As early as November 2014, Monsees, Pritzker, and Valani discussed “the addiction  
 20 issue” with JUUL, working on “defining our strategy” for how to frame and market their nicotine  
 21 product.<sup>440</sup>  
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 23  
 24

25 <sup>437</sup> JLI01356230; JLI01356237 (Nov. 2017); JLI00417815 (Feb. 2018)

26 <sup>438</sup> JLI02272904

27 <sup>439</sup> *Examining JLI’s Role in the Youth Nicotine Epidemic: Part II: Hearing Before the Subcomm. on*  
*Econ. & Consumer Policy of the Comm. on Oversight & Reform, H.R., 116<sup>th</sup> Cong. 70 (2019)*  
 (statement of James Monsees, Co-Founder, JUUL Labs, Inc.).

28 <sup>440</sup> JLI01259728.



1           385. In January 2015, JLI’s Board of Directors, including Monsees, Bowen, Valani, Pritzker,  
 2 met and discussed JLI’s marketing.<sup>441</sup> At this meeting, the “key pillars” identified included “win[ing]  
 3 with the ‘cool crowd’ in critical markets,” “build[ing] demand among the masses,” “lead[ing] with  
 4 digital and ecommerce foundation,” and “us[ing] external audiences to communicate nuanced  
 5 messages around early adoption ‘coolness.’” The presentation for this meeting also included “how” to  
 6 market JUUL, including “PR & influencer coverage with regarded national media in targeted markets,  
 7 including LA & NYC at launch,” and “build[ing] loyal consumer community via social media.” The  
 8 Board recognized that JLI had to act quickly because “[o]nline regulatory restrictions may affect [its]  
 9 future e-commerce strategy.” In short, the entire marketing strategy, including the planned partnership  
 10 with the #1 youth media magazine, Vice, was presented to the Board for approval before its launch.  
 11

12           386. The Board, including Pritzker and Valani, also controlled JLI’s messaging on nicotine  
 13 even before JUUL launched. In January 2015, the Board directed the marketing team on several key  
 14 topics related to JLI’s marketing approach regarding nicotine. Sarah Richardson noted that “[a]fter  
 15 yesterday’s board meeting conversation,” she and Gal Cohen sought to clarify in a follow-up meeting  
 16 with Adam Bowen “direction from the board on their comfort level with” aspects of the marketing  
 17 approach. She noted that sales materials reference JUUL’s “cigarette-level nicotine satisfaction,”  
 18 “nicotine delivery akin to a cigarette,” and “nicotine absorption rates.” The marketing team planned to  
 19 ask the Board to clarify its “comfort level with ‘satisfying’ messaging,” and “Is our goal still that we  
 20 are champions of transparency, public health, and consumer interests? If so – at what level are we  
 21 comfortable being proactive in achieving this?”<sup>442</sup>  
 22

23           387. On March 23, 2015, JLI’s Board of Directors—at that time composed of Monsees,  
 24 Bowen, Valani, Pritzker, and Handelsman (occupying Valani’s second seat)—met and discussed,  
 25  
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27 <sup>441</sup> JLI00212009.

28 <sup>442</sup> JLI01121750.

1 among other things, their plan for JUUL, including summaries for the launch, what was next, and “ROI  
 2 opportunities.”<sup>443</sup> The presentation for the meeting noted that “to build a company worth \$500B+ you  
 3 need INNOVATION that fundamentally disrupts MANY \$100B+ industries . . . and creates entirely  
 4 new \$B industries along the way.” The meeting included a “JUUL launch update,” which noted that  
 5 “Influencer Marketing has begun.”  
 6

7 388. The Board also approved specific marketing materials used in JUUL’s launch. In March  
 8 2015, the Board approved of the Vaporized marketing campaign despite its obvious youth appeal. The  
 9 Board reviewed Vaporized marketing images and made “some commentary at the youthfulness of the  
 10 models[,]” but “nobody disliked them” and “everybody agreed they are pretty ‘effective[.]’”<sup>444</sup> The  
 11 Board knew that the ads targeted youth, but “Juul’s board of directors signed off on the company’s  
 12 launch plans[.]”<sup>445</sup>  
 13

14 389. Because the Board of Directors—which in March 2015 included only Bowen, Monsees,  
 15 Pritzker, Valani, and Handelsman (in Valani’s second seat)—reviewed and approved these marketing  
 16 campaigns, Defendants Bowen, Monsees, Pritzker, and Valani caused the Vaporized campaign,  
 17 including its omission of any reference to nicotine content, to be distributed via the mails and wires.  
 18 Notably, Pritzker and Valani, who controlled three of the five Board seats filled at that time, had veto  
 19 power over the launch plans which included this youthful advertising with no representations of  
 20 nicotine content, yet they approved the marketing to go forward.  
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24 <sup>443</sup> JLI00216307.

25 <sup>444</sup> INREJUUL\_00174387.

26 <sup>445</sup> Ainsley Harris, *How Juul, founded on a life-saving mission, became the most embattled startup of*  
 27 *2018: E-cigarette startup Juul Labs is valued at more than \$16 billion. It’s also hooking teens on*  
 28 *nicotine and drawing scrutiny from the FDA. Can the company innovate its way out of a crisis it*  
*helped create?*, Fast Company (Nov. 19, 2018), [https://www.fastcompany.com/90262821/how-juul-](https://www.fastcompany.com/90262821/how-juul-founded-on-a-life-saving-mission-became-the-most-embattled-startup-of-2018)  
[founded-on-a-life-saving-mission-became-the-most-embattled-startup-of-2018](https://www.fastcompany.com/90262821/how-juul-founded-on-a-life-saving-mission-became-the-most-embattled-startup-of-2018).

1           390. After launch, executives and directors discussed whether to rein in the advertising to  
 2 teenagers. According to Scott Dunlap, then Chief Operating Officer, in June 2015, Nicholas Pritzker  
 3 commented that the branding “feels too young[.]”<sup>446</sup> At the June 17, 2015 Board meeting, the Board  
 4 heard “an update on the rollout of JUUL. . . . Mr. Mumby then provided the board with his perspective  
 5 on the JUUL launch and customer feedback. The Board discussed the Company’s approach to  
 6 advertising and marketing and portrayal of the product, which led to a discussion of the Company’s  
 7 longer term strategy led by Mr. Monsees.”<sup>447</sup>

9           391. According to an anonymous former company manager: “Inside the company, the first  
 10 signs that Juul had a strong appeal to young people came almost immediately after the sleek device  
 11 went on sale in 2015.”<sup>448</sup> “[E]arly signs of teenage use kicked off an internal debate . . . Some  
 12 company leaders . . . argued for immediate action to curb youth sales. . . . The counter-argument came  
 13 from other company directors, including healthcare entrepreneur Hoyoung Huh and other early  
 14 investors”—that is, Pritzker and Valani—who “argued the company couldn’t be blamed for youth  
 15 nicotine addiction.”<sup>449</sup>

17           392. In early July 2015, Alexander Asseily “spoke to James [Monsees] at length” on the  
 18 “JUUL approach.”<sup>450</sup> Asseily also spoke “at length” with Valani and Pritzker, following up with a  
 19 lengthy email advocating against continued youth marketing. He began by noting that “our fears  
 20 around tobacco / nicotine are not going away. We will continue to have plenty of agitation if we don’t  
 21 come to terms with the fact that these substances are almost irretrievably connected to the shittiest  
 22

24  
 25 <sup>446</sup> JLI00206239.

<sup>447</sup> JLI01426553.

26 <sup>448</sup> Chris Kirkham, *Juul Disregarded Early Evidence it was Hooking Teens*, REUTERS (Nov. 5, 2019),  
 27 <https://www.reuters.com/investigates/special-report/juul-ecigarette/>.

<sup>449</sup> *Id.*

<sup>450</sup> JLI00214617.

1 companies and practices in the history of business.”<sup>451</sup> He stated that “an approach needs to be taken  
 2 that actively, if implicitly, distances us from [Big Tobacco]: what we say, the way we sell, the way we  
 3 run the company, what we emphasi[z]e, who we hire, etc.”<sup>452</sup> Referring to JLI’s strategy to use the  
 4 same marketing techniques as major tobacco companies used to market to youths, Asseily added that  
 5 “[t]he trouble with just doing ‘what the others do’ is that we’ll end up as Nick [Pritzker] rightly points  
 6 out in the same ethical barrel as them, something none of us want no matter the payoff (I think).”<sup>453</sup> He  
 7 continued that “the world is transparent and increasingly intolerant of bullshit. It’s not about faking it -  
 8 it’s about doing it correctly....which could mean **not doing a lot of things we thought we would do**  
 9 **like putting young people in our poster ads or drafting in the wake of big players in the**  
 10 **market.**”<sup>454</sup> He pushed for an alternative marketing plan targeting only “existing smokers” and laid out  
 11 a vision for the company “making products based in science and with a state goal of doing right by our  
 12 customer.”<sup>455</sup>

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 14  
 15 393. Pritzker, Valani, and Huh rejected this approach, opposing any actions to curb youth  
 16 sales. Youth sales were a large potential source of revenue.<sup>456</sup> As one manager explained, perhaps  
 17 “people internally had an issue” with sales of JUULs to teenagers, “[b]ut a lot of people had no  
 18 problem with 500 percent year-over-year growth.”<sup>457</sup> And company leaders understood that teenagers  
 19 who were hooked on nicotine were the most likely segment to become lifelong addicts and thus were  
 20 the most profitable customers to target.<sup>458</sup>

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21  
 22  
 23 <sup>451</sup> *Id.*

24 <sup>452</sup> *Id.*

25 <sup>453</sup> *Id.*

26 <sup>454</sup> *Id.* (emphasis added).

27 <sup>455</sup> *Id.*

28 <sup>456</sup> Chris Kirkham, *Juul Disregarded Early Evidence it was Hooking Teens*, Reuters (Nov. 5, 2019),  
<https://www.reuters.com/investigates/special-report/juul-ecigarette/>.

<sup>457</sup> *Id.*

<sup>458</sup> *Id.*

394. In October 2015, the debate was resolved in favor of selling to teens. Although JLI's highly sanitized Board minutes do not reflect whether this debate was put to a vote, Huh, Pritzker, and Valani were the driving force behind this decision. They were aligned in favor of continuing youth marketing, and Valani's second board seat (occupied by Handelsman) would have given them a majority if a vote was necessary (regardless of Bowen's vote). Pritzker, Valani and Huh's position ultimately prevailed—JLI continued marketing JUUL to youths, Monsees was removed as CEO, and Pritzker, Valani, and Huh appointed themselves the newly formed Executive Committee. Even though the directors and executives of JLI knew—and explicitly stated—that what they were doing was wrong, they pressed ahead with JUUL's youth-oriented Vaporized ad campaign through early 2016.<sup>459</sup>

395. The company also implemented the Board's decision to target and sell to minors in many other ways. For example, in early October 2015, sales and marketing employees of Pax Labs noted that only 74% of users were able to pass the age gate on the website, "which is a steep decline in sales for us."<sup>460</sup> In mid-January 2016, a similar group of employees estimated that about 11% of those reaching the JUUL Purchase Confirmation Page on Pax Labs's own website were under 18 years old.<sup>461</sup> But, rather than strengthen JUUL's age verification system, Pax Labs worked to weaken it. In February 2016,<sup>462</sup> Pax Labs modified the age verification system so that 92% of users were able to pass the age gate.<sup>463</sup> By changing the age verification process so that users were more likely to pass—while

<sup>459</sup> The Vaporized advertising campaign continued at least into early 2016. Robert K. Jackler et al., *JUUL Advertising Over Its First Three Years on the Market*, Stanford Research Into the Impact of Tobacco Advertising 7 (Jan. 31, 2019),

[http://tobacco.stanford.edu/tobacco\\_main/publications/JUUL\\_Marketing\\_Stanford.pdf](http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf).

<sup>460</sup> INREJUUL\_00276445.

<sup>461</sup> Native attachment to INREJUUL\_00078494.

<sup>462</sup> JLI00068428.

<sup>463</sup> Kate Horowitz's LinkedIn profile, <https://www.linkedin.com/in/k8horowitz> (last visited Mar. 9, 2020).

1 knowing that some minors had already been able to pass before the change—Pax Labs deliberately  
 2 chose to continue selling to underage purchasers.

3 396. In July 2015, Asseily suggested “a cheeky campaign that asks existing smokers to  
 4 return their unused cigarette packets (or other vaping products) to us in return for a discount on JUUL”  
 5 because that would “send the only message that’s needed: JUUL is a superior alternative to  
 6 conventional smoking and mediocre vaping products.”<sup>464</sup> But JLI did not run this campaign then and in  
 7 fact did not begin focusing its advertising on switching from combustible cigarettes until 2018.<sup>465</sup>

8 397. By March 2016, however, JLI employees internally recognized that JLI’s efforts to  
 9 market to children were too obvious. On March 2, 2016, Richard Mumby, the Chief Marketing Officer,  
 10 sent a document related to JLI’s branding to Hoyoung Huh and a number of other marketing  
 11 employees of JLI.<sup>466</sup> According to Mumby, he was sending the document because Hoyoung Huh  
 12 “indicated that [he] would review [JLI’s] brand and collateral positioning on behalf of the board.”<sup>467</sup>  
 13 The attached document noted that “[t]he models that we used for the #Vaporized campaign appeared to  
 14 be too youthful for many consumers (and the media).”<sup>468</sup> Under a header that listed as one of JLI’s  
 15 “Objectives” to “Be Different & Have Integrity[,]” the document stated that “[w]e need to be sensitive  
 16 to the subjectivity of youthfulness by positioning the brand to be mature and relatable.”<sup>469</sup> On March  
 17 11, 2016, Mumby sent another version of this document to Hoyoung Huh and Zach Frankel (who was  
 18 then an observer on the Board and would later become a director), and Mumby thanked them “for the  
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24 <sup>464</sup> JLI00214617.

25 <sup>465</sup> Robert K. Jackler et al., *JUUL Advertising Over Its First Three Years on the Market*, Stanford  
 26 Research Into the Impact of Tobacco Advertising 16 (Jan. 31, 2019),  
[http://tobacco.stanford.edu/tobacco\\_main/publications/JUUL\\_Marketing\\_Stanford.pdf](http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf).

27 <sup>466</sup> INREJUUL\_00178377.

28 <sup>467</sup> INREJUUL\_00061469.

<sup>468</sup> INREJUUL\_00178379.

<sup>469</sup> INREJUUL\_00178384.



1 support on this.”<sup>470</sup> Around this time, Pax Labs reoriented its JUUL advertising from the explicitly  
2 youth-oriented Vaporized campaign to a more subtle approach to appeal to the young. The  
3 advertising’s key themes continued to include pleasure/relaxation, socialization/romance, and  
4 flavors<sup>471</sup>—all of which still appealed to teenagers, as was made clear in the previous litigation against  
5 the cigarette industry and Altria and Philip Morris in particular.  
6

7 398. Pritzker, Valani, and Huh, along with Bowen and Monsees continued to direct and  
8 approve misleading marketing campaigns long after launch. For example, JLI deceptively marketed  
9 mint to youth, through flavor-driven advertising, hashtag campaigns, and ads cross-promoting mango  
10 and mint.

11 399. Notably, none of JLI’s early advertisements, including those of the “Vaporized”  
12 campaign and others targeted to youths, disclosed that JUUL contains high amounts of nicotine;  
13 indeed, many of those advertisements did not advertise JUUL’s nicotine content whatsoever.  
14

15 400. Likewise, none of JLI’s advertisements, including those of the “Vaporized” campaign  
16 and others targeted to youths, disclosed the health risks from consuming JUUL products.

17 401. JLI and the Management Defendants knew of course that JUUL contained an ultra-high  
18 concentration of nicotine, and that ultra-high concentration of nicotine was designed to addict. They  
19 also knew that e-cigarette products, including JUUL, would expose users to increased health risks,  
20 including risks to their lungs and cardiovascular system. Despite that knowledge, JLI and the  
21 Management Defendants took affirmative actions, the natural consequence of which was the approval  
22 and transmission of these false and misleading advertisements that did not include a disclosure of  
23 JUUL’s high nicotine content and concentration, nor any health risks at all.  
24

25  
26 <sup>470</sup> INREJUUL\_00061274.

27 <sup>471</sup> Robert K. Jackler et al., *JUUL Advertising Over Its First Three Years on the Market*, Stanford  
28 Research Into the Impact of Tobacco Advertising 9 (Jan. 31, 2019),  
[http://tobacco.stanford.edu/tobacco\\_main/publications/JUUL\\_Marketing\\_Stanford.pdf](http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf).

**d. Pritzker, Huh, and Valani Were Able to Direct and Participate in the Youth Marketing Because They Seized Control of the JLI Board of Directors.**

402. Although Defendants Bowen and Monsees were the visionaries behind JLI and the most hands-on in its early stages, by the time JLI was pushing its marketing campaigns in early-to mid-2015, JLI (through the individuals running the company), Bowen, Monsees, Pritzker, Valani, and Huh were each intimately involved in the planning and execution of activities.

403. For example, JLI stopped interacting with the press in the summer of 2015 while its Board of Directors, controlled by Bowen, Monsees, Pritzker, Huh, and Valani, was finalizing a “messaging framework.”<sup>472</sup> A legitimate business enterprise would typically ramp up, rather than shut down, press outreach at the very time the company is supposed to be building awareness for its recently launched product.

404. But the Management Defendants at this point were taking actions that went beyond the regular and legitimate business operations of JLI. At the same time JLI stopped traditional press engagement, the Board of Directors was directing and monitoring the launch plans that they had set in motion – including the launch of sponsored content on social media in July 2015 (which content did not include any warnings about JUUL’s nicotine content or health risks).<sup>473</sup>

405. And at the same time the Management Defendants had approved the early JLI marketing campaigns that were intentionally targeting youth, there was a fundamental shift in roles when Defendants Pritzker, Valani, and Huh took charge of the instrumentalities of JLI, including its employees and resources.

406. Specifically, in October 2015, Monsees stepped down from his role as Chief Executive Officer of JLI (to become Chief Product Officer) and, in his stead, Pritzker, Valani, and Huh formed an

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<sup>472</sup> INREJUUL\_00056077

<sup>473</sup> *Id.*

1 Executive Committee of the JLI Board of Directors that would take charge of fraudulently marketing  
2 JUUL products, including to youth. The Management Defendants, and in particular Huh, wanted to  
3 continue their fraudulent marketing, knowing that these ads were also targeted to youth, “argu[ing] that  
4 the company couldn’t be blamed for youth nicotine addiction[.]”<sup>474</sup>

5  
6 407. Keeping the company’s youth marketing on track was critical to and consistent with  
7 Pritzker, Valani, and Huh’s objective of accelerating JUUL’s growth and expanding its customer  
8 base—and increasing profitability. Monsees reported to investors that the Executive Committee was  
9 “formed to provide more consistent and focused direction to the company,” and Monsees stepped  
10 down as CEO so that the Executive Committee could “usher in the next phase of growth for the  
11 business.”<sup>475</sup> Hoyoung Huh served as the Executive Chairman and Pritzker as Co-Chairman.

12  
13 408. On October 6, 2015, the day after Pritzker, Valani, and Huh ousted Monsees as CEO  
14 and rejected suggestions to abandon the current youth-oriented marketing, Richard Mumby  
15 acknowledged in an email to Huh, Pritzker, and Valani that their seizing power would facilitate  
16 JUUL’s growth: “Many thanks for the candid conversation yesterday. Not an easy moment for PAX  
17 Labs, but I’m excited about the future that these changes will afford. . . . Clearly, improving our sales  
18 strategy and integrating sales/marketing better is crucial to our growth.”<sup>476</sup>

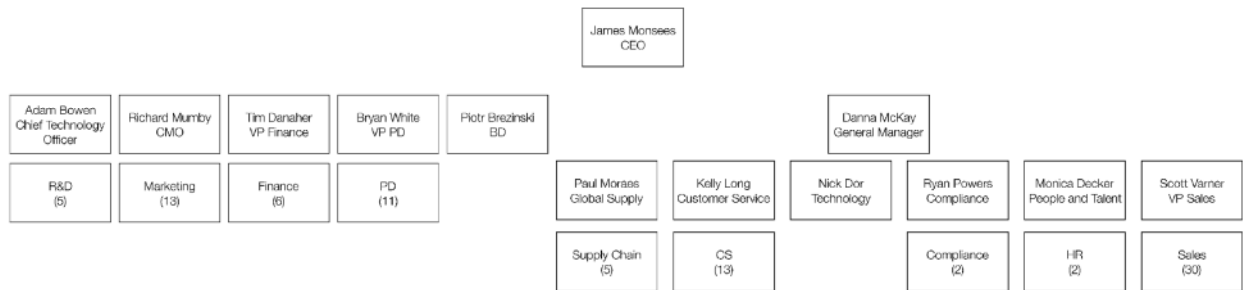
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26 <sup>474</sup> Chris Kirkham, *Juul Disregarded Early Evidence it was Hooking Teens*, Reuters (Nov. 5, 2019),  
<https://www.reuters.com/investigates/special-report/juul-ecigarette/>.

27 <sup>475</sup> JLI01369470

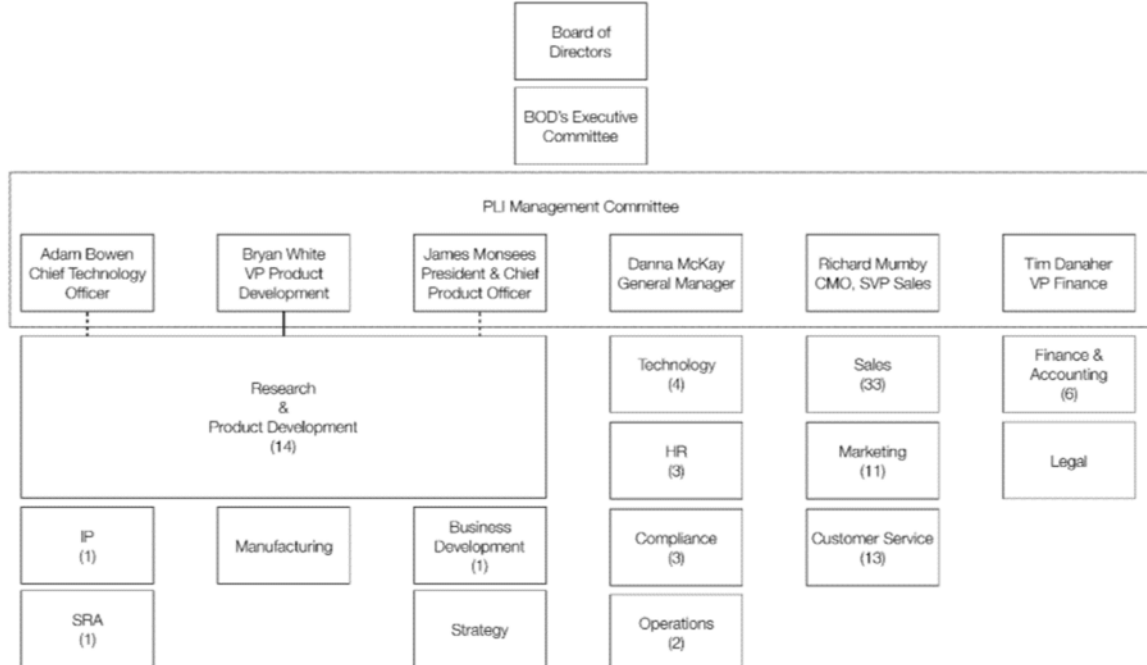
28 <sup>476</sup> JLI00214159

409. JLI's organizational charts later reflected the executive committee in the place of a CEO. Before late 2015, the company's organizational charts showed the CEO at the head of the company, reporting to the Board.<sup>477</sup>

#### org chart - October 2015



410. After Monsees was removed as CEO, the Executive Committee appeared in the place of the CEO.<sup>478</sup>



<sup>477</sup> See INREJUUL\_00016456 (July 9, 2014).

<sup>478</sup> INREJUUL\_00278332 (Dec. 7, 2015); INREJUUL\_00061420 (Apr.21, 2016).

1           411. Board minutes also illustrate how the Executive Committee of Pritzker, Valani and  
 2 Huh, acted as CEO of JLI during this time period, taking direct control of the company and making  
 3 critical decisions about how to market JUUL. Until late October 2015, Monsees (then the CEO) ran  
 4 Board meetings.<sup>479</sup> In late October 2015 and thereafter, however, Huh (then Executive Chairman and  
 5 member of the Executive Board) began running Board meetings.<sup>480</sup> Also, the late October minutes  
 6 report that the “Board discussed . . . the additional responsibilities that would be assigned to Bryan  
 7 White” (who was a Vice President of Engineering and Product Design at the time), and furthermore  
 8 that “[a] discussion followed regarding who Bryan should report to, and it was agreed that the  
 9 executive committee that had been formed since the last Board meeting, consisting of Messrs. Huh,  
 10 Pritzker and Valani, would address this issue.”<sup>481</sup> Additionally, the Board “discussed how these new  
 11 roles and responsibilities would be communicated internally.”<sup>482</sup> Over time, the list of direct reports to  
 12 the board grew. By early 2018, every senior JUUL executive officer was reporting to the board  
 13 directly.<sup>483</sup>

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20 <sup>479</sup> See INREJUUL\_00278406 *et seq.* (Oct. 5, 2015); INREJUUL\_00278410 *et seq.* (Sept. 24, 2015).

21 <sup>480</sup> See INREJUUL\_00278404 *et seq.* (October 26, 2015); INREJUUL\_00278402 *et seq.* (Nov. 10, 2015).

22 <sup>481</sup> INREJUUL\_00278405 (Oct. 26, 2015).

23 <sup>482</sup> *Id.*

24 <sup>483</sup> JLI01115999. Direct reports attending board meetings included Piotr Breziznski, VP International;  
 25 Christine Castro, VP, Public Relations; Gal Cohen, Senior Director Scientific and Regulatory Affairs;  
 26 Tim Danaher, CFO; Joanna Engelke, CQO; Ashley Gould, Chief Administrative Officer; Jacob  
 27 Honig, Head of E-commerce; Mark Jones, Associate General Counsel; Vittal Kadapakkam, Senior  
 28 Director Strategic Finance; Sonia Kastner, VP Global Supply; Vincent Lim, VP, Human Resources;  
 Danna McKay, General Manager; Isaac Pritzer, Advisor to Executive Team; Bob Robbins, Chief  
 Sales Officer; Wayne Sobon, VP, Intellectual Property; Tevi Troy, VP, Public Policy; Jacob Turner,  
 Director of Finance; William Ward, Senior IP Counsel; Bryan White, VP Product Design; Rasmus  
 Wissmann, VP Data.

1           412. By December 2015, it was confirmed that “Hoyoung [Huh] will make decisions on  
2 behalf of the BOD [Board of Directors] Exec[utive] Comm[ittee]” and “3-4 days/week Nick [Pritzker]  
3 and/or Hoyoung [Huh] will be in the office” to “help us manage our people[.]”<sup>484</sup>

4           413. Consistent with his role as Executive Chairman, Huh delivered the “Vision for the  
5 company” agenda item at the December 2015 Board meeting.<sup>485</sup> Huh laid out JLI’s action plans going  
6 forward, and the explicit goal was to grow JUUL for sale to or joint venture with “Big Tobacco.”<sup>486</sup> To  
7 this end and as part of the discussion about how to “grow and sell Juul,” Defendants Huh, Pritzker, and  
8 Valani wanted even “more aggressive rollout and [marketing].”<sup>487</sup>

9           414. Huh served as the Executive Chairman of the Board from October 2015 until at least  
10 May 2016, and others, particularly Monsees, deferred heavily to Huh as the decision-maker during that  
11 period. For example, a JLI executive emailed Huh, Valani, Pritzker, and Handelsman to organize a  
12 Board call with Fidelity on December 16, 2015, and added “let me know if you think we should invite  
13 James [Monsees].”<sup>488</sup> Pritzker deferred that decision to Huh, who decided that Monsees was allowed,  
14 responding, “Am fine w[ith] James joining.”<sup>489</sup>

15           415. In December 2015, Monsees expressed concerns about JLI’s marketing budget to Huh  
16 in an extremely deferential way, concluding, “As I’ve said, I’m highly sensitive right now to not  
17 overstepping my mandate and risk deteriorating the management committee dynamic. I request your  
18 assistance in helping me find the right time and place (if any) to present and discuss these concerns.  
19 I’m at your service.”<sup>490</sup>

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24 <sup>484</sup> INREJUUL\_00061856.

25 <sup>485</sup> JLI01346296

26 <sup>486</sup> INREJUUL\_00278352 – 00278359

27 <sup>487</sup> *Id.*

28 <sup>488</sup> JLI01363643

<sup>489</sup> JLI01363649

<sup>490</sup> JLI01363612



1           416. Again expressing concerns about JLI's leadership and management, Monsees sent Huh  
 2 an email in December 2015, discussing what he perceived as needed changes, including Board  
 3 restructuring, the appointment of an interim CEO, and restructuring of Executive Committee. Monsees  
 4 communicated these concerns in the form of a draft letter written on Huh's behalf to Pritzker, Valani,  
 5 and Hank Handelsman.<sup>491</sup> These suggestions ultimately were not implemented.

7           417. In May 2016, Monsees responded to an inquiry from potential investors, saying that  
 8 "Hoyoung Huh (our Executive Chairman)" should be involved in any discussions.<sup>492</sup> Monsees  
 9 separately sought Huh's advice and guidance on how to respond to unsolicited investor inquiries like  
 10 this, adding "if there's something else you'd like me to do (pass along to you or someone else?) I'll be  
 11 happy to do so."<sup>493</sup>

12           418. Over the next year, until the installation of a new CEO in August 2016, Defendants  
 13 Pritzker, Valani, and Huh used their newly formed Executive Committee to expand the number of e-  
 14 cigarette users through fraudulent advertising and representations to the public. They cleaned house at  
 15 JLI by "dismiss[ing] other senior leaders and effectively tak[ing] over the company."<sup>494</sup> Despite any  
 16 potential internal misgivings about their fraudulent conduct, notably, none of Management Defendants  
 17 terminated their relationship with JLI during this time period.

18  
 19           **8. Pritzker, Valani, and Huh continued to exercise control over and direct the affairs**  
 20 **of JLI even after a new CEO was appointed.**

21           419. Although JLI hired a new CEO in August 2016, Pritzker, Valani, and Huh's Executive  
 22 Committee does not appear to have been dissolved, and these three Defendants continued to exercise  
 23 control over and direct the affairs of JLI.  
 24

25 <sup>491</sup> JLI01363610

26 <sup>492</sup> JLI01369376

27 <sup>493</sup> JLI01369407

28 <sup>494</sup> Julie Creswell & Sheila Kaplan, *How Juul Hooked a Generation on Nicotine*, N.Y. Times (Nov. 24, 2019), <https://www.nytimes.com/2019/11/23/health/juul-vaping-crisis.html>.

1           420. In 2017, the Board—controlled at that time by Pritzker, Valani, and Huh—continued to  
 2 make decisions on the details of the media plans for marketing. For example, a JLI marketing  
 3 employee reported to JLI’s media vendor, Mediasmith, that JLI’s chief marketing officer “presented  
 4 the entire media plan to the board,” but “we need to put the plan on hold” because the Board did not  
 5 approve. She also acknowledged that JUUL’s board was aware their message was reaching a youth  
 6 audience, noting that “What we need to do now is educate the board” on “the ways we can ensure [the]  
 7 message is NOT reaching an unintended, young audience.”<sup>495</sup>

9           421. In December 2017, Valani directed aspects of JLI’s distribution and dissemination. For  
 10 example, he initiated a conversation checking the progress on plans to sell JUUL devices in vending  
 11 machines, asking for early design images and constructs.<sup>496</sup>

12           422. Pritzker also controlled several aspects of JLI’s branding. He was directly involved in  
 13 creating JUUL’s corporate website in May 2017. Pritzker dictated specific changes to the content on  
 14 the site in a conversation with Ashley Gould (Chief Administrative Officer).<sup>497</sup>

15           423. Also in May 2017, Ashley Gould asked the Board for their feedback on a proposed  
 16 name for JUUL’s parent company, and Pritzker weighed in by saying “I’d like to discuss,” and also  
 17 evaluated potential names, and sought to ensure that if the new name were to appear on any packaging,  
 18 the JUUL brand name would still be the most prominent.<sup>498</sup>

19           424. In October 2017, the Board reviewed sample marketing campaign materials, and  
 20 Pritzker rejected a specific proposal, noting that he “didn’t like ‘smokers deserve better  
 21 alternatives.’”<sup>499</sup>

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25 <sup>495</sup> INREJUUL\_00100719

26 <sup>496</sup> JLI00308379

27 <sup>497</sup> JLI01345258

28 <sup>498</sup> JLI01345255

<sup>499</sup> JLI00322485

1           425. Pritzker even got involved in customer service issues. In July 2017, Dave Schools, a  
 2 JUUL customer, member of a famous band, and influencer, complained about bad customer service  
 3 and defective devices. Schools' email to JLI begins, "Please note I have copied Nick Pritzker on this  
 4 email only because he asked me to do so."<sup>500</sup>

5           426. Pritzker and Valani were also in close control of JLI's public relations and media  
 6 strategies. For example, Pritzker received an email from a teacher addressing youth use of Juul in  
 7 schools, forwarded it to the team and directed a specific and personal response to the teacher.<sup>501</sup> In  
 8 January 2018, Ashley Gould reported directly to Valani, Monsees, and Kevin Burns about a study  
 9 linking teen e-cigarette use to an increased likelihood of trying cigarettes. Valani responded with a  
 10 detailed messaging strategy and action items to respond to this negative press, including running  
 11 "strategic media analysis [to] see where these articles are coming from," "debunk[ing] the studies, . . .  
 12 ideally in coordination with independent researchers," financially supporting efforts to raise the  
 13 tobacco minimum legal sales age to twenty-one years old, hiring a "credible head" of youth policy, and  
 14 estimating "the number of adult smokers that have switched." Valani directed Gould to give a "week-  
 15 by-week progress" report on these tasks.<sup>502</sup>

16           427. Valani sent Gould another unfavorable news article about e-cigarettes in April 2018,  
 17 and she responded that her teams were already working on "next steps" in response. Valani asked  
 18 Gould for an update later the same day.<sup>503</sup>

19           428. After Kevin Burns replaced Tyler Goldman as JLI's CEO, Burns worked closely with  
 20 Pritzker and Valani in particular, seeking their approval regularly. For example, in April 2018, Kevin  
 21 Burns suggested making several key hires to Valani and Pritzker, seeking their input; he also noted that  
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 23  
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26 <sup>500</sup> JLI11015358

27 <sup>501</sup> JLI00024566

28 <sup>502</sup> JLI00147328

<sup>503</sup> JLI1053533

1 he would seek Pritzker and Valani's approval on a draft response to an inquiry by U.S. Senators and a  
 2 press release regarding youth prevention efforts.<sup>504</sup> Also in April 2018, Valani edited a press release  
 3 about JUUL's "Comprehensive Strategy to Prevent Underage Use" and sent his redline to the CEO.<sup>505</sup>  
 4 In December 2018, CEO Kevin Burns sought approval from Valani and Pritzker on a specific  
 5 advertising campaign, saying, "I suggest we proceed" with specified television, print, and radio  
 6 spots.<sup>506</sup> Valani, copying Pritzker, approved only certain videos, deciding "[w]e shouldn't air the short  
 7 form ones."<sup>507</sup>

9 429. Also in December 2018, JLI's marketing team prepared slides for Burns to give a  
 10 marketing overview presentation to the board,<sup>508</sup> and Burns sent the slides to Pritzker and Valani in  
 11 advance, inviting their feedback.<sup>509</sup> Likewise, in January 2019 Burns sent Valani and Pritzker a news  
 12 article characterizing the *Make the Switch* campaign as aimed at adult smokers, noting that the article  
 13 said "this campaign and positioning is starkly different from 2015." Valani responded, copying  
 14 Pritzker, "Really good. Happy to see this reaction."<sup>510</sup>

16 430. In March 2019, Burns sent a copy of his op-ed in the Washington Post, called "Vape  
 17 Makers Must Do More to Stop Kids from Using E-Cigarettes," to Pritzker and Valani, saying, "We  
 18 just got word that our youth survey has been accepted for peer review and will be published in 2-3  
 19 weeks by a well regarded journal." Pritzker responded "Awesome. And I like the timing and wording  
 20  
 21  
 22  
 23

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24 <sup>504</sup> JLI10529705

25 <sup>505</sup> JLI00151297; JLI00151298

26 <sup>506</sup> JLI10071280

27 <sup>507</sup> JLI10071228

28 <sup>508</sup> JLI1007754

<sup>509</sup> JLI10071922

<sup>510</sup> JLI0070326

of the op ed.”<sup>511</sup> Valani also responded, saying “This is really great. Nicely written.” Pritzker and Burns then discussed making a “strategic decision” about the availability of flavors in retail stores.<sup>512</sup>

**9. Pritzker and Valani directed and controlled JLI’s negotiations with Altria**

431. Pritzker and Valani, along with Kevin Burns, were the lead negotiators for JLI on the Altria deal.

432. Altria knew that when it was negotiating with JLI, Pritzker and Valani were the company. In June 2017, Altria, preparing for a meeting with JLI, noted that “Per Perella Weinberg Partners, Valani and Pritzker control majority of voting power and 44% economic interests.”<sup>513</sup> A later internal Altria presentation reported on Altria’s “continued dialogue with key [JLI] investors,” noting that Valani and Pritzker “indicate that they control majority of voting power.”<sup>514</sup>

433. On paper, negotiations were between Howard Willard (Altria’s then-CEO), and Pritzker, Valani, and Kevin Burns for JLI. In April 2018, Willard sent confidential “Exchange of Volume Information” to Pritzker, copying Valani and Burns.<sup>515</sup> Willard also sent a detailed email to Pritzker and Valani, along with Burns, regarding Altria’s proposed “collaboration ... [that] creates a plan to manage that [antitrust] risk,” and “productive partnership that can create substantial value above what is achievable under a standalone scenario in a dynamic tobacco category environment.”<sup>516</sup> Many other email exchanges related to the deal are between Altria’s team, Pritzker, Valani, and Kevin Burns.<sup>517</sup>

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<sup>511</sup> JLI10064121

<sup>512</sup> JLI01144202

<sup>513</sup> ALGAT0002834151.

<sup>514</sup> ALGAT0000280623

<sup>515</sup> JLI10530188

<sup>516</sup> JLI10530232

<sup>517</sup> See, e.g., JLI01389789; JLI10523767; JLI01389792; JLI10518886.

1           434. But some key discussions involved only Pritzker and Valani as the real power brokers  
 2 for JLI. For example, an April 2018 email string discussing how to resolve a standstill and restart the  
 3 Altria deal negotiation included only Willard, Pritzker, and Valani.<sup>518</sup> Pritzker told Willard what he  
 4 and Altria’s lawyers needed to work out to have “the continuing right to talk to Riaz [Valani] and  
 5 me.”<sup>519</sup>

7           435. Pritzker and Valani worked to build a partnership with Altria. After attending a closing  
 8 dinner, Hank Handelsman, JLI Board member and proxy for Pritzker and Valani, emailed Willard and  
 9 stated, “More importantly to me was the camaraderie shown after a bruising negotiation! In 45 years of  
 10 doing deals, some in the tobacco industry, I have not seen the ‘we are at peace, let’s move on’ attitude  
 11 that I witnessed that lovely evening!” In response, Pritzker added KC Crosthwaite to the email chain  
 12 and thanked Willard and the Altria personnel for the dinner, and stated, “We truly appreciate our  
 13 partnership, and look forward to an even deeper collaboration in the future.”<sup>520</sup>

15           436. Pritzker and Valani continued to communicate with Altria’s CEO on behalf of JLI after  
 16 the negotiations ended. On May 26, 2019, Pritzker asked Willard whether he was planning to attend  
 17 “the youth/PMTA meeting in DC,” and “if so, do you think we can find time for you, Riaz [Valani]  
 18 and I to get together separately?”<sup>521</sup>

20           437. Pritzker, Valani, Willard, and Crosthwaite coordinated a response to the Youth Vaping  
 21 Prevention Plan in July 2019. Willard offered his “reaction to the [Youth Vaping Prevention] Plan”  
 22 and advised JLI, based on his experience as a cigarette company CEO, not to publicly commit to using  
 23 the plan or otherwise make an announcement addressing it.<sup>522</sup>

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25 <sup>518</sup> ALGAT0000113109

26 <sup>519</sup> *Id.*

27 <sup>520</sup> ALGAT0003889812

28 <sup>521</sup> ALGAT0003285214

<sup>522</sup> ALGAT0003279064

**10. JLI and the Management Defendants Knew Their Efforts Were Wildly Successful in Building a Youth Market and Took Coordinated Action to Ensure That Youth Could Purchase JUUL Products.**

**a. JLI's Strategy Worked.**

438. The Management Defendants knew that the JUUL marketing campaigns they directed and approved were successful in targeting youth. As Reuters has reported, “the first signs that JUUL had a strong appeal to young people came almost immediately after the sleek device went on sale in 2015 . . . . Employees started fielding calls from teenagers asking where they could buy more JUULs, along with the cartridge-like disposable ‘pods’ that contain the liquid nicotine.”<sup>523</sup> A former senior manager told the New York Times that “[s]ome people bought more JLI kits on the company’s website than they could individually use—sometimes 10 or more devices.” He added that “[f]irst, they just knew it was being bought for resale,” but later “when they saw the social media, in fall and winter of 2015, they suspected it was teens.”<sup>524</sup> Adam Bowen admitted that “he was aware early on of the risks e-cigarettes posed to teenagers[.]”<sup>525</sup> On January 5, 2016, Gal Cohen forwarded a presentation dated December 16, 2015, which asked the question: “If *large numbers of youth are initiating tobacco use with flavored e-cigarettes*, but adults [*sic*] smokers may benefit from completely switching to an e-cigarette, what should the market look like?”<sup>526</sup> It was common knowledge within JLI that JUULs were being sold to children.

439. After the Vaporized campaign, retail stores began selling out of JUUL products, and JLI had a difficult time trying to meet demand coming from its online ordering platform.

<sup>523</sup> Chris Kirkham, *Juul Disregarded Early Evidence it was Hooking Teens*, Reuters (Nov. 5, 2019), <https://www.reuters.com/investigates/special-report/juul-ecigarette/>.

<sup>524</sup> Matt Richtel & Sheila Kaplan, *Did Juul Lure Teenagers and Get ‘Customers for Life’?: The e-cigarette company says it never sought teenage users, but the F.D.A. is investigating whether Juul intentionally marketed its devices to youth*, NY Times (Aug. 27, 2018), <https://www.nytimes.com/2018/08/27/science/juul-vaping-teen-marketing.html>.

<sup>525</sup> *Id.*

<sup>526</sup> INREJUUL\_00339938 (emphasis added).



440. Furthermore, it was obvious to those outside the company that JLI was selling JUUL products to children. In June 2015, reporting on the “Vaporized” campaign that accompanied the JUUL launch, AdAge reported that John Schachter, director of state communications for Campaign for Tobacco-Free Kids, “expressed concern about the JUUL campaign because of the youth of the men and women depicted in the campaign, especially when adjoined with the design” and added that there had been “obvious trends that appeal to adolescents in e-cigarette campaigns<sup>[.]</sup>”<sup>527</sup> Robert Jackler, a Stanford physician who investigated JLI’s launch campaign, concluded that “JLI’s launch campaign was patently youth-oriented.”<sup>528</sup> JLI’s commercials’ attempts to appeal to teenagers were so obvious that, by October 2015, Stephen Colbert ran a satirical segment on it that noted, among other things: “And it’s not just ads featuring hip young triangles that appeal to the youths; so do vape flavors like cotton candy, gummi bear, and skittles.”<sup>529</sup>

441. Moreover, the Management Defendants knew that kids were marketing JLI products on social media, and some even sought to take advantage of that to build the JLI brand. For example, on July 16, 2016, Adam Bowen emailed Tyler Goldman about social media posts by children about JUUL e-cigarettes, stating, “I’m astounded by this ‘ad campaign’ that apparently some rich east coast boarding school kids are putting on.”<sup>530</sup> Bowen added that “Riaz [Valani] was thinking maybe we can leverage user generated content.”<sup>531</sup>

<sup>527</sup> Declan Harty, *JUUL Hopes to Reinvent E-Cigarette Ads with ‘Vaporized Campaign’*, AdAge (June 23, 2015), <http://adage.com/article/cmo-strategy/juul-hopes-reinvent-e-cigarette-ads-campaign/299142/>.

<sup>528</sup> Erin Brodwin, *See how Juul turned teens into influencers and threw buzzy parties to fuel its rise as Silicon Valley’s favorite e-cig company*, Bus. Insider (Nov 26, 2018), <https://www.businessinsider.com/stanford-juul-ads-photos-teens-e-cig-vaping-2018-11>.

<sup>529</sup> *The Late Show with Stephen Colbert: Vaping is So Hot Right Now*, YouTube (Oct. 7, 2015), [https://www.youtube.com/watch?v=PMtGca\\_7leM](https://www.youtube.com/watch?v=PMtGca_7leM). The “triangles” ad was a JUUL ad; the listed flavors were not, but JUUL also had flavors that appealed to children.

<sup>530</sup> JLI00382271.

<sup>531</sup> *Id.*

**b. JLI Closely Tracked Its Progress in Reaching Young Customers through Social Media and Online Marketing**

442. Tracking the behaviors and preferences of youth that are under twenty-one, and especially those under eighteen, has long been essential to the successful marketing of tobacco products. Whether the activity is called “tracking” or “targeting,” the purpose has always been the same: getting young people to start smoking and keeping them as customers.

443. As early as 1953, Philip Morris was gathering survey data on the smoking habits of “a cross section of men and women 15 years of age and over.”<sup>532</sup> Commenting on these data, George Weissman, then-Vice President of Philip Morris, observed that “we have our greatest strength in the 15-24 age group.”<sup>533</sup>

444. Traditional approaches to youth tracking (e.g., interviews conducted face-to-face or over the telephone) were limited, however, in that they often failed to capture data from certain subsets of the target market. As a Philip Morris employee noted in a June 12, 1970 memorandum, Marlboro smokers were “among the types of young people our survey misses of necessity (on campus college students, those in the military and those under 18 years of age).”<sup>534</sup>

445. However, modern technology has removed many of the hurdles that made youth tracking difficult in decades past. With industry connections, e-mail, social media and online forums, JLI can track, and has consistently tracked and monitored its target youth market, including those below the minimum legal age to purchase or use JUUL products.

446. First, JLI knew from its sales data that the large majority of its customers were under the age of 21. In December 2017, JLI employees discussed potentially supporting raising the legal age

<sup>532</sup> Philip Morris Vice President for Research and Development, *Why One Smokes*, First Draft, 1969, Autumn (Minnesota Trial)

<sup>533</sup> *United States v. Philip Morris*, 449 F. Supp. 2d 1, 581 (D.D.C. 2006).

<sup>534</sup> *Id.*

1 to purchase e-cigarettes to 21 and started that based on the data collected by Avail Vapor, “this would  
2 be a devastating mistake” because “70% + of sales would be eliminated.”<sup>535</sup> According to Avail’s  
3 data, 70% of purchasers of JUUL were between 18 and 21 years old, 15% of customers were 22 to 29  
4 years old, 7% of customers were 30 to 44 years old, 6% of customers were 45 to 64 years old, and just  
5 1% of customers were 65 years old or older. JLI employees only noted that “Retailers know well that  
6 younger adults buy in greater quantities than mature adults” and supporting a raise of the legal age to  
7 21 “would show we simply do not understand our product success” and “would alienate a large portion  
8 of our existing consumers and advocates.”<sup>536</sup> The JLI employee also noted that “we need to understand  
9 (at least at the senior decision maker level) that our current success is fuel primarily by younger adult  
10 users” and not by “mass market adult combustion smokers.”<sup>537</sup>

11  
12 447. Second, using the tools available to it, JLI would have known that its viral marketing  
13 program was a resounding success, and in particular with young people.  
14

15 448. Between 2015 and 2017, JUUL-related posts on Twitter increased quadratically, which  
16 is the exact result to be expected from an effective viral marketing campaign.<sup>538</sup> Its growth on  
17 Instagram was likely even more rapid.

18 449. A 2018 study of JLI’s sales and presence on social media platforms found that JLI grew  
19 nearly 700%, yet spent “no recorded money” in the first half of 2017 on major advertising channels,  
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25 <sup>535</sup> JLI10344468.

26 <sup>536</sup> *Id.*

27 <sup>537</sup> *Id.*

28 <sup>538</sup> See Brittany Emelle, et al., *Mobile Marketing of Electronic Cigarettes in the U.S.*, (May 2017),  
<https://www.slideshare.net/YTHorg/mobile-marketing-of-electronic-cigarettes>.

and spent only \$20,000 on business-to-business advertising.<sup>539</sup> Despite JLI's apparently minimal advertising spend in 2017, the study found a significant increase in JUUL-related tweets in 2017.<sup>540</sup>

450. On Instagram, the study found seven JUUL-related accounts, including DoIt4JUUL and JUULgirls, which accounted for 4,230 total JUUL-related posts and had more than 270,000 followers.<sup>541</sup>

451. In addition to JUUL's explosive growth on individual social media platforms, the study found JUUL products being marketed across platforms in an apparently coordinated fashion, including smaller targeted campaigns and affiliate marketing, all of which caused the authors to question whether JLI was paying for positive reviews and JUUL-related social media content.

452. The lead author of the study concluded that JLI was "taking advantage" of the reach and accessibility of multiple social media platforms to "target the youth and young adults . . . because there are no restrictions," on social media advertising.<sup>542</sup>

453. Similarly, an account named @JUULnation was established on Instagram and posted tips on how to conceal JUUL devices in school supplies. The account also ridiculed efforts to combat JUUL use in schools, promoted videos of JUUL influencers, and promoted videos like the "JUUL Challenge," in which users inhale as much JUUL nicotine vapor as possible in a fixed period of time. JLI repeatedly used the hashtag "#JUULnation" on posts on its own Instagram account, for example when advertising its "Cool Mint" JUULpods, JUUL's portability, or party mode.<sup>543</sup>

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<sup>539</sup> Jidong Huang et al., Vaping versus JUULing: how the extraordinary growth and marketing of JUUL transformed the US retail e-cigarette market, Tobacco Control (May 31, 2018), <https://tobaccocontrol.bmj.com/content/28/2/146.full>.

<sup>540</sup> *Id.*

<sup>541</sup> *Id.*

<sup>542</sup> Laura Kelly, *JUUL Sales Among Young People Fueled by Social Media, Says Study*, The Wash. Times (June 4, 2018), <https://www.washingtontimes.com/news/2018/jun/4/juul-sales-among-young-people-fueled-by-social-med/>.

<sup>543</sup> JLI00682401-484 at 428, 444, 451; *see also* Stanford University, *Research into the Impact of Tobacco Advertising*,

1           454. A separate study of e-cigarette advertising on mobile devices, where young people  
2 spend most of their day consuming media, found that 74% of total advertising impressions were for  
3 JUUL products.<sup>544</sup>

4           455. A 2019 study found that as much as half of JUUL's Twitter followers were aged  
5 thirteen to seventeen.<sup>545</sup>

6           456. A 2019 study characterizing JUUL-related Instagram posts between March and May  
7 2018 found that among nearly 15,000 relevant posts from over 5,000 unique Instagram accounts, more  
8 than half were related to youth or youth lifestyle.<sup>546</sup>

9           457. Some Twitter users have reported what appear to be JUUL bots.<sup>547</sup> Other Twitter users  
10 appear to either be bot accounts or native advertisers, in that they have a small number of followers,  
11 follow few other users, and post exclusively about JUUL content.<sup>548</sup>

12           458. By April 2018, searching "JUUL" on YouTube yielded 137,000 videos with forty-three  
13 videos having over 100,000 views.<sup>549</sup> Of these, a huge number were plainly related to underage use,  
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19           [http://tobacco.stanford.edu/tobacco\\_web/images/pod/juul/instagram/large/ig\\_11.jpg](http://tobacco.stanford.edu/tobacco_web/images/pod/juul/instagram/large/ig_11.jpg); Stanford  
20 University, *Research into the Impact of Tobacco Advertising*,

21           [http://tobacco.stanford.edu/tobacco\\_web/images/pod/juul/instagram/large/ig\\_12.jpg](http://tobacco.stanford.edu/tobacco_web/images/pod/juul/instagram/large/ig_12.jpg).

22           <sup>544</sup> See Brittany Emelle et al., *Mobile Marketing of Electronic Cigarettes in the U.S.*, Truth Initiative  
(May 2017), <https://www.slideshare.net/YTHorg/mobile-marketing-of-electronic-cigarettes>.

23           <sup>545</sup> Steven Reinberg, *Study: Half of Juul's Twitter followers are teens, young adults*, HealthDay News,  
(May 20, 2019) [https://www.upi.com/Health\\_News/2019/05/20/Study-Half-of-Juuls-Twitter-](https://www.upi.com/Health_News/2019/05/20/Study-Half-of-Juuls-Twitter-followers-are-teens-young-adults/1981558384957/)  
24           [followers-are-teens-young-adults/1981558384957/](https://www.upi.com/Health_News/2019/05/20/Study-Half-of-Juuls-Twitter-followers-are-teens-young-adults/1981558384957/).

25           <sup>546</sup> Lauren Czaplicki et al., *Characterising JUUL-related posts on Instagram*, Truth Initiative (Aug. 1,  
26           2019), <https://tobaccocontrol.bmj.com/content/early/2019/07/30/tobaccocontrol-2018-054824>.

27           <sup>547</sup> One example of what appear to be JUUL bots in action on Twitter is available at:  
28           <https://twitter.com/search?q=juul%20bot&src=typd> (last visited Apr. 4, 2020).

29           <sup>548</sup> Hennrythejuul (@hennrythejuul), Twitter (Mar. 4, 2020, 9:35 am) <https://twitter.com/hennrythejuul>.

30           <sup>549</sup> Divya Ramamurthi et al., *JUUL and Other Stealth Vaporizers: Hiding the Habit from Parents and*  
31           *Teachers, Tobacco Control 2019*, Stanford Univ. (Sept. 15, 2018),  
32           <https://tobaccocontrol.bmj.com/content/tobaccocontrol/28/6/610.full.pdf>.

including: 1,730 videos on “hiding JUUL in school,” 789 on “JUUL in school bathroom,” 992 on “hiding JUUL at home,” and 241 on “hiding JUUL in Sharpie.”<sup>550</sup>

459. In 2018, JLI was internally collecting hundreds of social media posts—directed at JLI—informing it of JUUL’s wild popularity with young people and in many cases requesting that JLI do something to stop it.<sup>551</sup>

# **11. JLI Worked with Veratad Technologies To Expand Youth Access to JUUL Products.**

460. At the same time JLI and the Management Defendants were taking coordinated actions to maintain and expand the number of nicotine-addicted e-cigarette users in order to ensure a steady and growing customer base through unlawful marketing and distribution activities, they worked with an outside entity—Veratad Technologies LLC—to get JUULs into the hands of the largest number of users possible.

461. In furtherance of JLI and the Management Defendants’ efforts to secure youth sales so crucial to expanding JUUL’s market share (and JLI’s profits), and as detailed below, from approximately 2015 to 2018, JLI and Veratad worked together to try to pass as many people as possible through an on-line “age verification” system that users had to pass to be able to order JUUL products.

462. JLI’s website, including its online store, was pivotal to these efforts. Early marketing documents show that JLI planned a “consumer journey” that started with a consumer being exposed to misleading JUUL marketing in stores, where JUUL’s “fun” and “approachable” in-store marketing

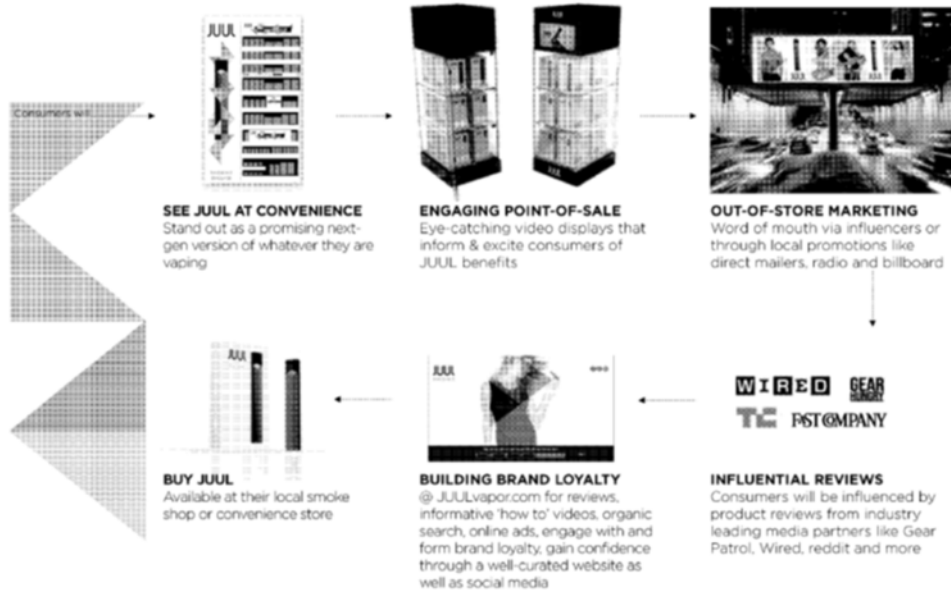
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<sup>550</sup> *Id.*

<sup>551</sup> Complaint at 60, *People v. JUUL Labs, Inc.*, No. RG19043543 (Super. Ct. of Cal. Nov. 18, 2019), <https://oag.ca.gov/system/files/attachments/press-docs/91186258.pdf>.=.

would lead users to JLI's website for additional misrepresentations and omissions about JUUL products, an email subscription sign-up, and purchases through JLI's ecommerce platform:<sup>552</sup>

### CUSTOMER JOURNEY



HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

INREJUUL\_00329660

463. JLI worked with Veratad to provide age verification services for its website from 2015 to 2018. Veratad has also provided age verification services to other e-cigarette sellers, including Lorillard<sup>553</sup> and Altria.<sup>554</sup> Consistent with the claim on Veratad's website that "*You can create your own verification rules,*" the company encouraged sellers like JLI to set the desired compliance level for age verification. As a member of a major e-cigarette trade organization, Veratad also offered insight into what competitors were doing, and offered to "guide your setup to follow industry best practices for age verification."

<sup>552</sup> INREJUUL\_00329660

<sup>553</sup> Staff of Sen. Richard Durbin et al., 113th Cong., *Gateway to Addiction?* (Apr. 14, 2014), <https://www.durbin.senate.gov/imo/media/doc/Report%20-%20E-Cigarettes%20with%20Cover.pdf>.

<sup>554</sup> INREJUUL\_00174362.



1           464. Though it is illegal to sell and ship e-cigarettes to minors under both state and federal  
2 law, JLI and Veratad designed and implemented an age verification system designed to maximize the  
3 number of prospective purchasers who “pass” the process, rather than to minimize the number of  
4 underage sales.<sup>555</sup> As a result of these intentionally permissive age verification practices, JLI and  
5 Veratad used online payment systems and the US mails to ship tens of millions of dollars of JUULpods  
6 to unverified customers, many of whom were minors.

8           465. From June 2015 through the end of 2018, the age verification process on JLI’s website  
9 typically prompted prospective purchasers to submit their name, address, and date of birth, which JLI  
10 forwarded to Veratad. Veratad then attempted to match all or some limited part of the consumer’s  
11 information to a person of the minimum legal sales age in its database. If Veratad was able to locate a  
12 sufficient match of the prospective purchaser to a person of the minimum legal sales age in its  
13 database, then it would return a “pass” result to JLI. If Veratad was unable to make such a match,  
14 Veratad returned a “fail” result to JLI.

16           466. If Veratad returned a “fail” result to JLI, rather than decline the prospective purchaser,  
17 JLI would prompt the person to enter an “alternate” address. If Veratad still could not find a match  
18 based on this alternate address, JLI would prompt the consumer to enter the last four digits of his or her  
19 social security number.

21           467. If Veratad, supplied with the last four digits of a consumer’s social security number,  
22 still could not match the consumer to a person of the minimum legal sales age in its database, JLI  
23 would prompt the consumer to upload an image or photograph of his or her driver’s license or another  
24 governmental identification document. A JLI employee would then conduct a personal review of the  
25 image and decide whether the consumer was of the minimum legal sales age.

27 <sup>555</sup> Complaint at 165, People v. JUUL Labs, Inc., No. RG19043543 (Super. Ct. of Cal. Nov. 18, 2019),  
28 <https://oag.ca.gov/system/files/attachments/press-docs/91186258.pdf>.=.

1           468. Crucially, Veratad’s age verification system was purposefully flexible, so JLI and  
 2 Veratad could work together to decide just how closely a prospective purchaser’s personal information  
 3 had to match records in Veratad’s database in order to “pass” the age verification process. JLI and  
 4 Veratad could also set, or modify, the applicable minimum legal sales age to be used for verification.  
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6           469. By the fall of 2015, JLI and Veratad knew that bulk purchases were being made for  
 7 resale on JLI’s website by minors and for resale to minors.<sup>556</sup> For example, on May 25, 2016, JLI  
 8 employees discussed an online purchase of JUUL products made by a fifteen-year-old boy. A JLI  
 9 employee wrote that “[t]his order had failed age verification a few times with the person’s information  
 10 as below. The person even uploaded an ID, which was obviously fake and rejected by us. Then, the  
 11 user entered a different email address and passed from Veratad, and the order was sent.” The employee  
 12 discussed a communication with Veratad that confirmed that Veratad did not review the date of birth  
 13 entered by the user when determining whether a person passed age verification for JUUL. JLI  
 14 recognized that “[t]his situation can potentially happen again.”<sup>557</sup>  
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16           470. Internal JLI documents confirm that JLI discussed underage purchases with Veratad.  
 17 For example, on May 27, 2016, JLI’s Head of Compliance & Brand Protection wrote that an “underage  
 18 purchaser changed his email address; which, allowed the order to be passed by Veratad. . . . I believe  
 19 that Nick and his team are still looking into the matter with Veratad to see if they can get a better  
 20 understanding of what happened.” A JLI employee replied “hmmm. Probably impossible to put up an  
 21 age gate that thwarts a committed teenager from penetrating it :)”<sup>558</sup>  
 22  
 23  
 24

25 <sup>556</sup> Matt Richtel & Sheila Kaplan, *Did Juul Lure Teenagers and Get ‘Customers for Life’?: The e-*  
 26 *cigarette company says it never sought teenage users, but the F.D.A. is investigating whether Juul*  
 27 *intentionally marketed its devices to youth*, NY Times (Aug. 27, 2018),  
<https://www.nytimes.com/2018/08/27/science/juul-vaping-teen-marketing.html>.

28 <sup>557</sup> INREJUUL\_00300253-258

<sup>558</sup> INREJUUL\_00209176-180

1           471. Nevertheless, the two companies worked together to find ways to “bump up [JLI’s] rate  
2 of people who get through age verification.”<sup>559</sup> JLI repeatedly sought, and Veratad repeatedly  
3 recommended and directed, changes to the age verification process so that more prospective JUUL  
4 purchasers would “pass.” Both did so in an effort to increase direct sales of JLI’s e-cigarettes without  
5 regard to whether its less stringent age verification process would permit more underage users to  
6 purchase them.

8           472. Between June 2015 and August 2017 (and perhaps even through early 2018), JLI and  
9 Veratad tailored the age verification system to “pass” prospective purchasers even if certain portions of  
10 the purchaser’s personal information—e.g., the purchaser’s street address or date of birth—did not  
11 match the information corresponding to a person of the minimum legal sales age in Veratad’s  
12 database.<sup>560</sup>

14           473. Similarly, between June 2015 and August 2017, JLI and Veratad tailored the system to  
15 “pass” a prospective purchaser under certain circumstances even when the prospective purchaser’s  
16 year of birth did not match the information corresponding to a person of the minimum legal sales age  
17 in Veratad’s database.

18           474. JLI and Veratad sought to increase “pass” rates by modifying the age verification  
19 system to allow users multiple opportunities to change their personal information if a match was not  
20 initially found in an appropriate government database. A Veratad Performance Report from August 5,  
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22 <sup>559</sup> INREJUUL\_00276489-INREJUUL\_00276490

23 <sup>560</sup> Complaint at 43, *People v. JUUL Labs, Inc.*, No. RG19043543 (Super. Ct. of Cal. Nov. 18, 2019),  
24 <https://oag.ca.gov/system/files/attachments/press-docs/91186258.pdf>. A January 29, 2018 email  
25 exchange between Tom Canfarotta, Director of Strategic Accounts & Client Quality Services at  
26 Veratad, and Annie Kennedy, JUUL’s Compliance Manager, reveals this to have been the case.  
27 Kennedy asked Canfarotta why a particular customer had “passed via the address step (public record  
28 check)...but we’ve since learned that is not a correct address—so we’re curious as to how it passed.”  
In response, Canfarotta wrote, “Your current rule set does not require a full address match.” He went  
on to explain that approval of the customer was not an anomaly or a mistake; instead, Veratad’s age  
verification system was working exactly the way it was designed.

2017 shows that, for 1,963 users Veratad recorded 3,794 transactions—an average of 1.93 attempts per consumer.<sup>561</sup> Only 966 users—less than half—passed age verification on the first attempt.<sup>562</sup> By allowing users to alter their personal information and attempt age verification up to three times, JLI was able to increase its database match pass rate from 49.2% to 61.2%.<sup>563</sup>

475. By design, these lax requirements ensured underage users could “pass” JLI’s age verification process and purchase JUUL e-cigarettes directly from JLI’s website by using their parent’s name, home address, and an approximate date of birth. JLI was aware of this fact, as evidenced by the multiple complaints it received from parents who alleged their children did just that.<sup>564</sup>

476. JLI directed and approved the system it had implemented with Veratad that caused accounts with “bad info” to be “AV approved” but, as a Senior Business Systems Manager at JLI commented, “if [v]eratad passed it [then] it’s not on us.”

477. JLI customer service representatives even encouraged those who failed age verification to “make multiple accounts in order to pass AV [age verification].”<sup>565</sup> Customer service representatives would go so far as to alter identifying information for them; a Slack chat among customer service representatives confirmed that representatives were authorized to “adjust the street address, apartment number, or zip code” associated with shipment.<sup>566</sup>

478. The age verification procedures designed by JLI and Veratad have allowed hundreds of thousands of e-cigarette products to be sold and/or delivered to fictitious individuals at fictitious

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<sup>561</sup> *Id.*

<sup>562</sup> *Id.*

<sup>563</sup> *Id.*

<sup>564</sup> INREJUUL\_00184119.

<sup>565</sup> INREJUUL\_00215324-INREJUUL\_00215325.

<sup>566</sup> Complaint at 168, *People v. JUUL Labs, Inc.*, No. RG19043543 (Super. Ct. of Cal. Nov. 18, 2019), <https://oag.ca.gov/system/files/attachments/press-docs/91186258.pdf>.=..

addresses.<sup>567</sup> Many of these improper sales may have been made to underage purchasers or to resellers who sold the products to underage users on the grey market.<sup>568</sup>

479. By divorcing the address from the other customer data in the age verification process, JLI and Veratad allowed users to request that tobacco products be sent to locations other than their permanent legal residences.<sup>569</sup> For example, JLI sent thousands of orders to commercial high rises and office parks.<sup>570</sup> It is unlikely these orders would have been approved had JUUL and Veratad required that addresses provided by users match information in an appropriate government database and followed the requirement that the shipping address and billing address be the same.<sup>571</sup>

480. The failure of the JLI/Veratad age verification procedure was intentional.<sup>572</sup> And despite JLI's concerted effort to enable the sale of federally regulated tobacco products to minors, JLI nevertheless publicly touted Veratad as the "gold standard" of age verification services. For example, JLI told a reporter with CBS, Pam Tighe, that "[t]here is an extensive age verification process in place to purchase JUUL online" and that JLI "work[s] with Veratad Technologies, the state-of-the-art, gold-standard for age verification. . . . Veratad uses billions of records from multiple trusted data sources to verify the information customers provide and to ensure customers qualify to access and purchase products from JUULvapor.com."<sup>573</sup> JLI later planned on sending this same, canned false language to a student journalist at Georgetown University.<sup>574</sup> Similarly, a JLI spokesperson told a reporter at a New York newspaper, *ANMY*, that JLI uses "industry-leading ID match and age verification technology to

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<sup>567</sup> *Id.* at 138.

<sup>568</sup> *Id.*

<sup>569</sup> *Id.* at 146

<sup>570</sup> *Id.* at 147.

<sup>571</sup> *Id.*

<sup>572</sup> *Id.* at 173.

<sup>573</sup> INREJUUL00178123-24.

<sup>574</sup> INREJUUL\_00264882-84.

1 ensure that customers” are over twenty-one years of age and that the “information is verified against  
2 multiple databases.”<sup>575</sup>

3 481. In August 2017, JLI responded to public scrutiny by publicly stating that it would  
4 increase the purchase age on its website to 21+ by August 23, 2017. In the weeks leading up to that  
5 date, it emailed the approximately 500,000 or more potential customers to report that customers who  
6 signed up for JLI’s “auto-ship” subscription service before August 23, 2017 would not have to prove  
7 that they were 21+ for as long as they maintained the subscription to receive JUULpods. As discussed  
8 herein, JLI knew that these marketing emails were being sent to underage individuals, including those  
9 who failed age verification. And at the same time, JLI advertised that the most popular flavor among  
10 youth, Mango, was now available on its “auto-ship” subscription service. As a result of this scheme,  
11 JLI’s subscription gains more than offset any losses from the site’s heightened age verification  
12 requirements.  
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27 <sup>575</sup> Alison Fox, ‘Juul’ e-cigarettes require stronger FDA regulation, *Schmuer Says*, AMNY, (Oct. 15,  
28 2017), <https://www.amny.com/news/juul-e-cigarettes-fda-regulation-1-14485385/>.

**Sunday Savings**

1 message

JUUL <hello@juulvapor.com>  
Reply-To: JUUL <hello@juulvapor.com>  
To:

Sun, Aug 20, 2017 at 7:48 PM

Experience the easiest way to enjoy JUUL and save 15% on each and every purchase.

**JUUL**

**Save 15%  
Today**

[SAVE NOW](#)



Try Auto-SHIP for free shipping and 15% savings  
on each and every JUUL order.



**Save Money**

Enjoy 15% savings  
on JUUL pods.



**Free Delivery**

JUUL pods delivered to  
your door every month.



**Cancel Anytime**

No contracts.  
No stress.



mango



cool mint



virginia tobacco



fruit medley



cream sauce

**5 Great  
Flavors To  
Choose From**

[SHOP JUULPODS >](#)

**Changes to JUUL Minimum Age Policy**

Starting this Wednesday 8/23/17, the minimum age to purchase  
products on JUULvapor.com will be 21+.  
Existing age-verified Auto-SHIP subscribers will not be impacted by this change.

**Need Help?**

Contact [JUL Support](#)  
Live support is available everyday, 9am-10pm PT.

JUULVAPOR



JUUL

447 4th Avenue St. #17

JUULVAPOR.COM





482. Further underscoring JLI's purpose of growing the e-cigarette market, even if that meant selling to youth, JLI and Veratad did not require that the year of birth and last four digits of the social security number match exactly the information corresponding to a person of the minimum legal sales age in Veratad's database until August 2018.

483. Tellingly, after JLI and Veratad implemented industry-standard age verification practices, JLI boasted to the FDA that approval rate for sales on its website had dropped to 27%.

484. While on one hand JLI continued working with Veratad to ensure minors could purchase JUUL products online, on the other JLI continued to make false and fraudulent statements about the strength of its age verification system. For example, on June 5, 2018, JLI tweeted about its relationship with Veratad, claiming that "We've partnered with Veratad Technologies to complete a public records search, only reporting back whether or not you are 21 years of age or older."<sup>576</sup> In addition, on November 13, 2018, JLI and the Managements Defendants caused a post to appear on JLI's website stating that JLI was "Restricting Flavors to Adults 21+ On Our Secure Website" and that JLI's age-verification system was "an already industry-leading online sales system that is restricted to

<sup>576</sup> JUUL Labs, Inc. (@JUULvapor), Twitter (June 5, 2018), <https://twitter.com/juulvapor/status/1004055352692752386>.

21+ and utilizes third party verification.”<sup>577</sup> A video accompanying this message stated “At JUUL labs we’re committed to leading the industry in online age verification security to ensure that our products don’t end up in the hands of underage users” and included an image of a computer with a chain wrapped around it and locked in place.<sup>578</sup> These statements were fraudulent because JLI and the Management Defendants were and had been coordinating with Veratad to ensure that their age verification system did not actually prevent youth from purchasing JUUL products.

485. Not only did JLI’s efforts result in more sales to minors, JLI was also able to build a marketing email list that included minors—a data set that would prove highly valuable to Altria.

486. In the summer of 2017, JLI engaged a company called Tower Data to determine the ages of the persons associated with email addresses on its email marketing list. According to this analysis, approximately 269,000 email addresses on JLI’s email marketing list were not associated with a record of an individual who had “passed” JLI’s age verification process.<sup>579</sup> Additionally, approximately 40,000 email addresses on JLI’s email marketing list were associated with records of individuals who had “failed” JLI’s own age verification process.<sup>580</sup> Tower Data informed JLI that 83% of the approximately 420,000 email addresses on JLI’s marketing list could not be matched with the record of an individual at least eighteen years of age.<sup>581</sup>

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<sup>577</sup> *JUUL Labs Action Plan* (“November 2018 Action Plan”), JUUL Labs, Inc. (Nov. 12, 2018), <https://newsroom.juul.com/juul-labs-action-plan/> (last visited Apr. 30, 2020).

<sup>578</sup> *Id.*

<sup>579</sup> Complaint at 121, *Commonwealth of Massachusetts v. JUUL, et al.*, No. 20-00402 (Super. Ct. of Mass. Feb. 12, 2020) <https://www.mass.gov/doc/juul-complaint/download>; Janice Tan, *E-cigarette firm JUUL sued for using programmatic buying to target adolescents*, Marketing (Feb. 14, 2020), <https://www.marketing-interactive.com/e-cigarette-firm-juul-sued-for-using-programmatic-buying-to-target-adolescents>.

<sup>580</sup> *Id.*

<sup>581</sup> *Id.*

1           487. Despite knowing that their marketing list included minors, JLI continued to use that  
2 marketing list to sell JUUL products, and then shared that list with Altria to use for its marketing  
3 purposes.

4           488. JLI and the Management Defendants knew, however, that it was not enough to  
5 disseminate advertisements and marketing materials that promote JLI to youth or to open online sales  
6 to youth, while omitting mention of JUUL's nicotine content and manipulated potency. To truly  
7 expand the nicotine market, they needed to deceive those purchasing a JUUL device and JUULpods as  
8 to how much nicotine they were actually consuming. And, through Pritzker, Huh, and Valani's control  
9 of JLI's Board of Directors, they did just that.  
10

## 11           **12. JLI Engaged in a Sham "Youth Prevention" Campaign**

12           489. By April 2017, JLI had determined that the publicity around its marketing to children  
13 was a problem. Ashley Gould, the company's General Counsel and Chief Regulatory and  
14 Communications Officer, thus sought to "hire a crisis communication firm to help manage the youth  
15 interest JUUL has received[.]"<sup>582</sup> By June 2017, JLI began developing a "youth prevention  
16 program[.]"<sup>583</sup> While ostensibly aimed at reducing youth sales, JLI's youth prevention program  
17 actually served to increase, not reduce, sales to children.  
18

19           490. By December 2017, JLI's youth prevention program included extensive work with  
20 schools.<sup>584</sup> JLI paid schools for access to their students during school time, in summer school, and  
21 during a Saturday School Program that was billed as "an alternative to 'traditional discipline' for  
22 children caught using e-cigarettes in school."<sup>585</sup> JLI created the curriculum for these programs, and,  
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24  
25 <sup>582</sup> INREJUUL\_00264878; *see also* INREJUUL\_00265042 (retaining Sard Verbinen, a strategic  
communications firm).

26 <sup>583</sup> *See, e.g.*, INREJUUL\_00211242.

27 <sup>584</sup> INREJUUL\_00173409.

28 <sup>585</sup> Subcommittee on Economic and Consumer Policy Memo (July 25, 2019),  
<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Supplemental%20Memo.pdf>.

1 like the “Think Don’t Smoke” campaign by Philip Morris, which “insidiously encourage[d] kids to use  
 2 tobacco and become addicted Philip Morris customers[.]”<sup>586</sup> JLI’s programs were shams intended to  
 3 encourage youth e-cigarette use, not curb it. According to testimony before Congress, during at least  
 4 one presentation, “[n]o parents or teachers were in the room, and JUUL’s messaging was that the  
 5 product was ‘totally safe.’ The presenter even demonstrated to the kids how to use a JUUL.”<sup>587</sup>  
 6 Furthermore, JLI “provided the children snacks” and “collect[ed] student information from the  
 7 sessions.”<sup>588</sup>

9 491. The problems with JLI’s youth prevention programs were widespread. According to  
 10 outside analyses, “the JUUL Curriculum is not portraying the harmful details of their product, similar  
 11 to how past tobacco industry curricula left out details of the health risks of cigarette use.”<sup>589</sup> Although  
 12 it is well-known that teaching children to deconstruct ads is one of the most effective prevention  
 13 techniques, JLI programs entirely omitted this skill, and JLI’s curriculum barely mentioned JUUL  
 14 products as among the potentially harmful products to avoid.<sup>590</sup> As one expert pointed out, “we know,  
 15 more from anecdotal research, that [teens] may consider [JUULs] to be a vaping device, but they don’t  
 16 call it that. So when you say to a young person, ‘Vapes or e-cigarettes are harmful,’ they say, ‘Oh I  
 17 know, but I’m using a JUUL.’”<sup>591</sup>

22 <sup>586</sup> William V. Corr, *American Legacy Foundation Study Shows Philip Morris 'Think Don't Smoke'*  
 23 *Youth Anti-Smoking Campaign is a Sham*, Campaign for Tobacco Free Kids (May 29, 2002),  
 24 [https://www.tobaccofreekids.org/press-releases/id\\_0499](https://www.tobaccofreekids.org/press-releases/id_0499).

25 <sup>587</sup> Subcommittee on Economic and Consumer Policy Memo (July 25, 2019),  
 26 <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Supplemental%20Memo.pdf>.

27 <sup>588</sup> *Id.*

28 <sup>589</sup> Victoria Albert, *Juul Prevention Program Didn't School Kids on Dangers, Expert Says*, The Daily  
 Beast (Oct. 19, 2018), <https://www.thedailybeast.com/juul-prevention-program-didnt-school-kids-on-dangers-expert-says>.

<sup>590</sup> *Id.*

<sup>591</sup> *Id.*

492. Internal emails confirm both that JLI employees knew about the similarities of JLI’s “youth prevention program” to the earlier pretextual antismoking campaigns by the cigarette industry and that JLI management at the highest levels was personally involved in these efforts. In April 2018, Julie Henderson, the Youth Prevention Director, emailed school officials about “the optics of us attending a student health fair” because of “how much our efforts seem to duplicate those of big tobacco (Philip Morris attended fairs and carnivals where they distributed various branded items under the guise of ‘youth prevention’).”<sup>592</sup> She later wrote that she would “confirm our participation w[ith] Ashley & Kevin”<sup>593</sup>—an apparent reference to Kevin Burns, at the time the CEO of JLI, who would later personally approve JLI’s involvement in school programs. In May 2018, Julie Henderson spoke with former members of Philip Morris’s “youth education” team,<sup>594</sup> and Ashley Gould received and forwarded what was described as “the paper that ended the Think Don’t Smoke campaign undertaken by Philip Morris.”<sup>595</sup> The paper concluded that “the Philip Morris campaign had a counterproductive influence.”<sup>596</sup>

493. JLI also bought access to teenagers at programs outside of school. For example, JLI paid \$89,000 to the Police Activities League of Richmond, California, so that all youth in the Richmond Diversion Program—which targeted “youth, aged 12-17, who face suspension from school for using e-cigarettes and/or marijuana” and “juveniles who have committed misdemeanor (lesser category) offenses”—would “participate in the JUUL labs developed program, Moving Beyond” for as long as ten weeks.<sup>597</sup> Similarly, JLI paid \$134,000 to set up a summer program for 80 students from a

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<sup>592</sup> INREJUUL\_00197608.

<sup>593</sup> INREJUUL\_00197607.

<sup>594</sup> INREJUUL\_00196624.

<sup>595</sup> INREJUUL\_00265202.

<sup>596</sup> Matthew C. Farrelly et al., *Getting to the Truth: Evaluating National Tobacco Countermarketing Campaigns*, 92 Am. J. Public Health 901 (2002).

<sup>597</sup> JLI-HOR-00002181 – 00002182.

1 charter school in Baltimore, Maryland.<sup>598</sup> Participants were “recruited from grades 3 through 12”<sup>599</sup>  
 2 and worked closely with teachers to develop personal health plans. JLI paid nearly 70% of the cost of  
 3 hiring eight teachers, eight instructional aides, and three other support personnel for the program.<sup>600</sup>

4 494. JLI was aware that these out-of-school programs were, in the words of Julie Henderson,  
 5 “eerily similar” to the tactics of the tobacco industry.<sup>601</sup> In June 2018, Ms. Henderson described  
 6 “current executive concerns & discussion re: discontinuing our work w[ith] schools[.]”<sup>602</sup> Eventually,  
 7 JLI ended this version of the youth prevention program, but the damage had been done: following the  
 8 playbook of the tobacco industry, JLI had hooked more kids on nicotine.

9 495. The Board was intimately involved in these “youth prevention” activities. For example,  
 10 in April 2018, Riaz Valani and Nicholas Pritzker edited a youth prevention press release, noting that  
 11 they “don’t want to get these small items wrong” and “think it’s critical to get this right.”<sup>603</sup>

### 12 **13. The FDA Warned JUUL and Others That Their Conduct is Unlawful**

13 496. Throughout 2018, the FDA put JLI and others in the e-cigarette industry on notice that  
 14 their practices of marketing to minors needed to stop. It issued a series of warnings letters and  
 15 enforcement actions:  
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22 <sup>598</sup> INREJUUL\_00194247; Invoice to JUUL Labs from The Freedom & Democracy Schools, Inc. for  
 \$134,000, dated June 21, 2018,

23 <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/JLI-HOR-00003711.pdf>.

24 <sup>599</sup> INREJUUL\_0019428.

25 <sup>600</sup> The Freedom & Democracy Schools, Inc., *Proposal to JUUL Labs for Funding the Healthy Life  
 Adventures Summer Pilot* (June 9, 2018),

26 [https://oversight.house.gov/sites/democrats.oversight.house.gov/files/JLI-HOR-  
 00002789\\_Redacted.pdf](https://oversight.house.gov/sites/democrats.oversight.house.gov/files/JLI-HOR-00002789_Redacted.pdf).

27 <sup>601</sup> INREJUUL\_00194646.

28 <sup>602</sup> INREJUUL\_00194646.

<sup>603</sup> JLI00151300.

1           497. On February 24, 2018, the FDA sent a letter to JLI expressing concern about the  
2 popularity of its products among youth and demanding that JLI produce documents regarding its  
3 marketing practices.<sup>604</sup>

4           498. In April 2018, the FDA conducted an undercover enforcement effort, which resulted in  
5 fifty-six warning letters issued to online retailers, and six civil money complaints to retail  
6 establishments, all of which were related to the illegal sale of e-cigarettes to minors.<sup>605</sup> Manufacturers  
7 such as JLI were also sent letters requesting documents regarding their marketing and sales methods.<sup>606</sup>

8           499. In May 2018, the FDA again issued more warning letters to manufacturers, distributors,  
9 and retailers of e-liquids for labeling and advertising violations; these labels and advertisements  
10 targeted children and resembled children's food items such as candy or cookies.<sup>607</sup>

11           500. In September 2018, the FDA engaged in several other regulatory enforcement actions,  
12 issuing over 1300 warning letters and civil money complaints to e-cigarette and e-liquid retailers and  
13 distributors.<sup>608</sup>

14           501. On September 12, 2018, the FDA sent letters to JLI and other e-cigarette manufacturers  
15 putting them on notice that their products were being used by youth at disturbing rates.<sup>609</sup> The FDA  
16 additionally requested manufacturers to enhance their compliance monitoring mechanisms, implement  
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22 <sup>604</sup> Matthew Holman, *Letter from Director of Office of Science, Center for Tobacco Products, to Zaid*  
23 *Rouag, at JUUL Labs, Inc.*, U.S. FDA (Apr. 24, 2018),  
24 <https://www.fda.gov/media/112339/download>.

25 <sup>605</sup> *Enforcement Priorities for Electronic Nicotine Delivery Systems (ENDS) and Other Deemed*  
26 *Products on the Market Without Premarket Authorization*, U.S. FDA (Jan. 2020),  
27 <https://www.fda.gov/media/133880/download>.

28 <sup>606</sup> *Id.*

<sup>607</sup> *Id.*

<sup>608</sup> *Id.*

<sup>609</sup> *Letter from US FDA to Kevin Burns*, U.S. FDA (Sept. 12, 2018),  
<https://www.fda.gov/media/119669/download>.



1 stricter age verification methods, and limit quantities and volume of e-cigarette products that could be  
 2 purchased at a time.<sup>610</sup>

3 502. Finally, in October 2018, the FDA raided JLI's headquarters and seized more than a  
 4 thousand documents relating to JLI's sales and marketing practices.<sup>611</sup> Since then, the FDA, the  
 5 Federal Trade Commission, multiple state attorneys general and the U.S. House of Representatives  
 6 Committee on Oversight and Reform have all commenced investigations into JLI's role in the youth e-  
 7 cigarette epidemic and whether JLI's marketing practices purposefully targeted youth.

8 503. Siddharth Breja, who was senior vice president for global finance at JLI, "claims that  
 9 after the F.D.A. raided Juul headquarters in October 2018, seeking internal documents, Mr. Burns  
 10 instructed Mr. Breja and other executives not to put anything relating to regulatory or safety issues in  
 11 writing, so that the F.D.A. could not get them in the future."<sup>612</sup>

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 13  
 14 **14. In Response to Regulatory Scrutiny, Defendants Misled the Public, Regulators,  
 and Congress that JLI Did Not Target Youth**

15 504. To shield their youth-driven success from scrutiny, Altria, JLI, and the Management  
 16 Defendants' had a long-running strategy to feign ignorance over JLI and the Management Defendants'  
 17 youth marketing efforts and youth access to JLI's products. They were well aware that JLI's conduct in  
 18 targeting underage users was reprehensible and unlawful, and that if it became widely known that this  
 19 was how JLI obtained its massive market share, there would be a public outcry and calls for stricter  
 20

21  
 22 <sup>610</sup> Press Release, *FDA takes new steps to address epidemic of youth e-cigarette use, including a*  
 23 *historic action against more than 1,300 retailers and 5 major manufacturers for their roles*  
 24 *perpetuating youth access*, US FDA (Sept. 11, 2018), <https://www.fda.gov/news-events/press-announcements/fda-takes-new-steps-address-epidemic-youth-e-cigarette-use-including-historic-action-against-more>.

25 <sup>611</sup> Laurie McGinley, *FDA Seizes Juul E-Cigarette Documents in Surprise Inspection of Headquarters*,  
 26 *Wash. Post* (Oct. 2, 2018), <https://www.washingtonpost.com/health/2018/10/02/fda-seizes-juul-e-cigarette-documents-surprise-inspection-headquarters/>.

27 <sup>612</sup> Sheila Kaplan & Jan Hoffman, *Juul Knowingly Sold Tainted Nicotine Pods, Former Executive Say*,  
 28 *N.Y. Times* (Nov. 20, 2019), <https://www.nytimes.com/2019/10/30/health/juul-pods-contaminated.html>.

1 regulation or a ban on JLI's products. Given the increasing public and regulatory scrutiny of JLI's  
 2 market share and marketing tactics, a dis-information campaign was urgently needed to protect the  
 3 Defendants' bottom line. For this reason, JLI, the Management Defendants, and Altria all hid JLI's  
 4 conduct by vociferously denying that JLI had marketed to and targeted youth and instead falsely  
 5 claimed that JLI engaged in youth prevention. Defendants continued to make these statements while  
 6 and after actively and successfully trying to market to and recruit youth non-smokers. These false  
 7 statements were designed to protect JLI's market share, and Altria's investment, by concealing JLI's  
 8 misconduct.

10 505. For example, after 11 senators sent a letter to JLI questioning its marketing approach  
 11 and kid-friendly e-cigarette flavors like Fruit Medley, Creme Brulee and mango, JLI visited Capitol  
 12 Hill and told senators that it never intended its products to appeal to kids and did not realize youth  
 13 were using its products, according to a staffer for Sen. Dick Durbin (D-Ill.). JLI's statements to  
 14 Congress—which parallel similar protests of innocence by tobacco company executives—were false.

16 506. Defendants also caused JLI to make public statements seeking to disavow the notion  
 17 that it had targeted and sought to addict teens:

- 18 • “It’s a really, really important issue. **We don’t want kids using our products.**” (CNBC  
 19 Interview of JLI’s Chief Administrative Officer, December 14, 2017)<sup>613</sup>
- 20 • “We market our products responsibly, following strict guidelines to have material  
 21 directly **exclusively toward adult smokers and never to youth audiences.**” (JLI  
 22 Social Media Post, March 14, 2018)<sup>614</sup>
- 23 • “Our company’s mission is to eliminate cigarettes and **help the more than one billion  
 24 smokers worldwide switch to a better alternative,**” said JUUL Labs Chief Executive  
 25 Officer Kevin Burns. “We are already seeing success in our efforts to enable adult

24 <sup>613</sup> Angelica LaVito, *Nearly one-quarter of teens are using pot*, CNBC (Dec. 14, 2017),  
 25 [https://www.cnbc.com/2017/12/13/marijuana-and-nicotine-vaping-popular-among-teens-according-](https://www.cnbc.com/2017/12/13/marijuana-and-nicotine-vaping-popular-among-teens-according-to-study.html)  
 26 [to-study.html](https://www.cnbc.com/2017/12/13/marijuana-and-nicotine-vaping-popular-among-teens-according-to-study.html) (Interview with Ashely Gould, JUUL Chief Administrative Officer) (emphasis added).

26 <sup>614</sup> Robert K. Jackler et al., *JUUL Advertising Over Its First Three Years on the Market*, Stanford  
 27 Research Into the Impact of Tobacco Advertising 15 (Jan. 31, 2019),  
 28 [http://tobacco.stanford.edu/tobacco\\_main/publications/JUUL\\_Marketing\\_Stanford.pdf](http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf) (citing a JUUL  
 social media post from March 14, 2018) (emphasis added).

smokers to transition away from cigarettes and believe our products have the potential over the long-term to contribute meaningfully to public health in the U.S. and around the world. At the same time, we are committed to deterring young people, as well as adults who do not currently smoke, from using our products. **We cannot be more emphatic on this point: No young person or non-nicotine user should ever try JUUL.**" (JLI Press Release, April 25, 2018),<sup>615</sup>

- "Our objective is to provide the 38 million American adult smokers with **meaningful alternatives to cigarettes while also ensuring that individuals who are not already smokers, particularly young people, are not attracted to nicotine products such as JUUL,**" said JUUL Labs Chief Administrative Officer Ashley Gould, who heads the company's regulatory, scientific and youth education and prevention programs. "We want to be a leader in seeking solutions, and are actively engaged with, and listening to, community leaders, educators and lawmakers on how best to effectively keep young people away from JUUL." (JLI Press Release, April 25, 2018),<sup>616</sup>
- "Of course, we understand that **parents and lawmakers are concerned about underage use of JUUL. As are we.** We can't restate this enough. As an independent company that is not big tobacco, we are driven by our mission and commitment to adult smokers." (JLI CEO Kevin Burns Letter to JUUL Community on Reddit, July 18, 2018)<sup>617</sup>
- "We welcome the opportunity to work with the Massachusetts Attorney General because, **we too, are committed to preventing underage use of JUUL.** We utilize stringent online tools to block attempts by those under the age of 21 from purchasing our products, including unique ID match and age verification technology. Furthermore, we have never marketed to anyone underage. Like many Silicon Valley technology startups, our growth is not the result of marketing but rather a superior product disrupting an archaic industry. When adult smokers find an effective alternative to cigarettes, they tell other adult smokers. That's how we've gained 70% of the market share. . . Our ecommerce platform utilizes unique ID match and age verification technology to make sure minors are not able to access and purchase our products online." (Statement from Matt David, JLI Chief Communications Officer, July 24, 2018),<sup>618</sup>
- "**We did not create JUUL to undermine years of effective tobacco control, and we do not want to see a new generation of smokers.** . . . We want to be part of the solution to end combustible smoking, not part of a problem to attract youth, never

<sup>615</sup> JUUL Labs, Inc., *JUUL Labs Announces Comprehensive Strategy to Combat Underage Use*, MarketWatch (Apr. 25, 2018), <https://www.marketwatch.com/press-release/juul-labs-announces-comprehensive-strategy-to-combat-underage-use-2018-04-25> (emphasis added).

<sup>616</sup> *Id* (emphasis added).

<sup>617</sup> *A Letter to the JUUL Community from CEO Kevin Burns*, Reddit (July 18, 2018), [https://www.reddit.com/r/juul/comments/8zvblh/a\\_letter\\_to\\_the\\_juul\\_community\\_from\\_ceo\\_kevin/](https://www.reddit.com/r/juul/comments/8zvblh/a_letter_to_the_juul_community_from_ceo_kevin/) (emphasis added).

<sup>618</sup> *Statement Regarding The Press Conference Held By The Massachusetts Attorney General*, JUUL Labs, Inc. (July 24, 2018), <https://newsroom.juul.com/statement-regarding-the-press-conference-held-by-the-massachusetts-attorney-general/> (emphasis added).

smokers, or former smokers to nicotine products. . . . We adhere to strict guidelines to ensure that our marketing is directed towards existing adult smokers.” (JLI’s website as of July 26, 2018);<sup>619</sup>

- “We don’t want anyone who doesn’t smoke, or already use nicotine, to use JUUL products. We certainly don’t want youth using the product. It is bad for public health, and it is bad for our mission. JUUL Labs and FDA share a common goal – preventing youth from initiating on nicotine. . . . **Our intent was never to have youth use JUUL products.**” (JLI Website, November 12, 2018)<sup>620</sup>
- “To paraphrase Commissioner Gottlieb, **we want to be the offramp for adult smokers** to switch from cigarettes, not an on-ramp for America’s youth to initiate on nicotine.” (JLI Website, November 13, 2018)<sup>621</sup>
- “Any underage consumers using this product are absolutely a negative for our business. We don’t want them. **We will never market to them. We never have.**” (James Monsees, quoted in *Forbes*, November 16, 2018);<sup>622</sup>
- “First of all, I’d tell them that I’m sorry that their child’s using the product. **It’s not intended for them.** I hope there was nothing that we did that made it appealing to them. As a parent of a 16-year-old, I’m sorry for them, and I have empathy for them, in terms of what the challenges they’re going through.” (CNBC Interview of JLI CEO, July 13, 2019)<sup>623</sup>
- “We have **no higher priority than to prevent youth usage of our products** which is why we have taken aggressive, industry leading actions to combat youth usage.” (JLI Website, August 29, 2019)<sup>624</sup>
- James Monsees, one of the company’s co-founders, said **selling JUUL products to youth was “antithetical to the company’s mission.”** (James Monsees’ Statement to New York Times, August 27, 2019)<sup>625</sup>

<sup>619</sup> *Our Responsibility*, JUUL Labs, Inc. (July 26, 2018),

<https://web.archive.org/web/20180726021743/https://www.juul.com/our-responsibility> (last visited Mar. 29, 2020) (emphasis added).

<sup>620</sup> *JUUL Labs Action Plan*, JUUL Labs, Inc. (Nov. 13, 2018), <https://newsroom.juul.com/juul-labs-action-plan/> (statement of Ken Burns, former CEO of JUUL) (emphasis added).

<sup>621</sup> *Id.* (emphasis added).

<sup>622</sup> Kathleen Chaykowski, *The Disturbing Focus of Juul’s Early Marketing Campaigns*, *Forbes* (Nov. 16, 2018 2:38 PM), <https://www.forbes.com/sites/kathleenchaykowski/2018/11/16/the-disturbing-focus-of-juuls-early-marketing-campaigns/#3dale11b14f9> (emphasis added) (statement of James Monsees).

<sup>623</sup> Angelica LaVito, *As JLI grapples with teen vaping ‘epidemic,’ CEO tells parent ‘I’m sorry’*, *CNBC* (July 13, 2019), <https://www.cnn.com/2019/07/13/as-juul-deals-with-teen-vaping-epidemic-ceo-tells-parents-im-sorry.html> (emphasis added).

<sup>624</sup> *Our Actions to Combat Underage Use*, JUUL Labs, Inc. (Aug. 29, 2019),

<https://newsroom.juul.com/our-actions-to-combat-underage-use/> (JUUL statement in response to lawsuits) (emphasis added).

<sup>625</sup> Matt Richtel & Sheila Kaplan, *Did Juul Lure Teenagers and Get ‘Customers for Life’?*, *N.Y. Times* (Aug. 27, 2018), <https://www.nytimes.com/2018/08/27/science/juul-vaping-teen-marketing.html> (emphasis added).

- Adam Bowen, one of the company’s co-founders, said he was aware early on of the risks e-cigarettes posed to teenagers, and the **company had tried to make JUUL “as adult-oriented as possible.”**(Adam Bowen’s Statement to the New York Times, August 27, 2019);<sup>626</sup>
- **“We have never marketed to youth and we never will.”**(JLI Statement to Los Angeles Times, September 24, 2019);<sup>627</sup>
- **“I have long believed in a future where adult smokers overwhelmingly choose alternative products like JUUL. That has been this company’s mission since it was founded, and it has taken great strides in that direction.”** (JLI’s CEO K.C. Crosthwaite, September 25, 2019);<sup>628</sup>
- **“As scientists, product designers and engineers, we believe that vaping can have a positive impact when used by adult smokers, and can have a negative impact when used by nonsmokers. Our goal is to maximize the positive and reduce the negative.”** (JLI Website, March 6, 2020);<sup>629</sup>
- **“JUUL was designed with adult smokers in mind.”** (JLI Website, last visited March 29, 2020).<sup>630</sup>

507. Defendants either made these statements directly or caused them to be transmitted as a part of their schemes to defraud the public about what they were selling and to whom.

508. Altria also engaged in wire fraud when it made public statements seeking to disavow the notion that JLI had targeted and sought to addict teens:

- **“Altria and JUUL are committed to preventing kids from using any tobacco products. As recent studies have made clear, youth vaping is a serious problem, which both Altria and JUUL are committed to solve. As JUUL previously said, ‘Our intent was never to have youth use JUUL products.’”** (Altria News Release, December 20, 2018).<sup>631</sup>

<sup>626</sup> *Id* (emphasis added).

<sup>627</sup> Michael Hiltzik, *Column: Studies show how JLI exploited social media to get teens to start vaping*, L.A. Times (Sept. 24, 2019), <https://www.latimes.com/business/story/2019-09-24/hiltzik-juul-target-teens> (statement made on behalf of JUUL) (emphasis added).

<sup>628</sup> Juul Labs Names New Leadership, Outlines Changes to Policy and Marketing Efforts, JUUL Labs, Inc. (Sept. 25, 2019), <https://newsroom.juul.com/juul-labs-names-new-leadership-outlines-changes-to-policy-and-marketing-efforts/> (emphasis added) (statement by K.C. Crosthwaite).

<sup>629</sup> *Our Mission*, JUUL LABS (2019), <https://www.juul.com/mission-values> (last visited Apr. 4, 2020) (emphasis added).

<sup>630</sup> JUUL Labs, Inc., <https://www.juul.com/> (last visited Mar. 29, 2020) (emphasis added).

<sup>631</sup> Altria Group, Inc., *Altria Makes \$12.8 Billion Minority Investment to Accelerate Harm Reduction and Drive Growth* (“Altria Minority Investment”) (Form 8-K), Ex. 99.1 (Dec. 20, 2018), <https://www.sec.gov/Archives/edgar/data/764180/000119312518353970/d660871dex991.htm> (emphasis added).



509. However, JLI, the Management Defendants, and Altria realized that attempting to shift public opinion through fraudulent statements was not enough to achieve their goal of staving off regulation. To accomplish this goal, they would also need to deceive the FDA and Congress. And so they set out to do just that through statements and testimony by JLI representatives. These include, but are not limited to, the following:

***Statements by JLI to the FDA:***

- “JUUL was not designed for youth, **nor has any marketing or research effort since the product’s inception been targeted to youth.**” (Letter to FDA, June 15, 2018).<sup>632</sup>
- “With this response, the Company hopes FDA comes to appreciate why the product was developed and **how JUUL has been marketed — to provide a viable alternative to cigarettes for adult smokers.**” (Letter to FDA, June 15, 2018).<sup>633</sup>

***Statements by Altria to the FDA:***

- “[W]e do not believe we have a current issue with youth access to or use of our pod-based products, we do not want to risk contributing to the issue.” (Letter from Altria CEO to FDA Commissioner Scott Gottlieb, October 25, 2018).<sup>634</sup>
- “We believe e-vapor products present an important opportunity to **adult smokers to switch from combustible cigarettes.**” (Letter to FDA Commissioner Gottlieb, 10/25/18)

***Statements by JLI to Congress:***

- “We never wanted any non-nicotine user, and certainly nobody under the legal age of purchase, to ever use JLI products. . . . That is a serious problem. Our company has no higher priority than combatting underage use.” (Testimony of James Monsees, July 25, 2019).<sup>635</sup>
- “Our product is **intended to help smokers stop smoking combustible cigarettes.**” (Ashley Gould, JLI Chief Administrative Officer, Testimony before House Committee on Oversight and Reform, July 25, 2019).<sup>636</sup>

<sup>632</sup> Letter from JUUL's Counsel at Sidley Austin to Dr. Matthew Holman, FDA at 2 (June 15, 2018) (emphasis added).

<sup>633</sup> *Id.* at 3 (emphasis added).

<sup>634</sup> Letter from Altria CEO Howard Willard to Dr. Scott Gottlieb, FDA at 2 (October 25, 2018) (emphasis added).

<sup>635</sup> *Examining Juul's Role in the Youth Nicotine Epidemic, Hearing Before the H. Comm. on Oversight and Reform, Subcomm. on Econ. and Consumer Policy*, 116th Cong. 1 (2019) (statement of James Monsees, Co-Founder, JUUL Labs, Inc.), <https://docs.house.gov/meetings/GO/GO05/20190725/109846/HHRG-116-GO05-Wstate-MONSEESJ-20190725.pdf>.

<sup>636</sup> *Examining Juul's Role in the Youth Nicotine Epidemic, Hearing Before the H. Comm. on Oversight and Reform, Subcomm. on Econ. and Consumer Policy*, 116th Cong. (2019) (statement of Ashley

**Statements by Altria to Congress:**

- “In late 2017 and into early 2018, we saw that the previously flat e-vapor category had begun to grow rapidly. JUUL was responsible for much of the category growth and **had quickly become a very compelling product among adult vapers**. We decided to pursue an economic interest in JUUL, believing that an investment would **significantly improve our ability to bring adult smokers a leading portfolio of non-combustible products** and strengthen our competitive position with regards to potentially reduced risk products.” (Letter from Altria CEO to Senator Durbin, October 14, 2019).<sup>637</sup>

510. Each of the foregoing statements constitutes an act of wire fraud. JLI, Monsees, and Altria made these statements, knowing they would be transmitted via wire, with the intent to deceive the public, the FDA, and Congress as to the Defendants’ true intentions of hooking underage users.

511. Their disinformation scheme was successful. While certain groups such as the American Medical Association were calling for a “sweeping ban on vaping products,”<sup>638</sup> no such ban has been implemented to date. Accordingly, JLI’s highly addictive products remain on the market and available to underage users.

**F. Altria Provided Services to JLI to Expand JUUL Sales and Maintain JUUL’s Position as the Dominant E-Cigarette.**

**1. Before Altria’s Investment in JLI, Altria Knew JLI Was Targeting Youth.**

512. As stated above, according to Howard Willard, Altria first contacted JLI about a commercial relationship in early 2017, with “confidential discussions” spearheaded by Pritzker and Valani, on the one hand, and senior executives of Altria and Altria Client Services on the other, beginning in the Spring of 2017.<sup>639</sup> These continued for eighteen months, culminating in Altria’s December 2018 equity investment in JLI.

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Gould, Chief Administrative Officer, JUUL Labs, Inc.), <https://www.c-span.org/video/?462992-1/hearing-cigarettes-teen-usage-day-2&start=6431> at 01:53:25 (emphasis added).

<sup>637</sup> Letter from Howard A. Willard III, Altria to Senator Richard J. Durbin, 6 (October 14, 2019) (emphasis added).

<sup>638</sup> Karen Zraick, *A.M.A. Urges Ban on Vaping Products as JLI is Sued by More States*, N.Y. Times (Nov. 19, 2019), <https://www.nytimes.com/2019/11/19/health/juul-lawsuit-ny-california.html>.

<sup>639</sup> Altria’s October 14, 2019 letter to Senator Durbin, et. al., by Howard Willard III (2019).



1           513. While at first blush, these meetings between Altria and Altria Client Services and  
 2 Pritzker and Valani about potential investment—described in detail below—might seem like ordinary  
 3 business activity, they were anything but. For nearly 18 months, Altria and Altria Client Services  
 4 dangled the carrot of a multi-billion dollar payout in front of Pritzker and Valani—months in which  
 5 Pritzker, Valani, and the other Management Defendants committed numerous acts of fraud to grow the  
 6 business of JLI in order to satisfy Altria’s expectations. And at the same time, Altria and Altria Client  
 7 Services were actively courting Pritzker and Valani with that promised payout, they were gathering  
 8 information on JLI that confirmed Altria would be purchasing a company with a proven track-record  
 9 of sales to youths.  
 10

11           514. Even before 2017, Altria and Altria Client Services—as with anyone paying attention to  
 12 the e-vapor industry at the time—were well aware that JLI had been targeting kids with its youthful  
 13 marketing. As noted above, JLI’s “Vaporized” campaign had made its way into the national zeitgeist,  
 14 with Stephen Colbert noting that the advertising appealed “to the youths.” So, not only did Altria and  
 15 Altria Client Services know JLI was targeting kids at the time it reached out to begin negotiations, it  
 16 also knew that such targeting was highly successful. A May 23, 2017 presentation by Altria Client  
 17 Services observed that “[l]ines outside of vape shops and/or calls to vape shops regarding stock [of  
 18 JUUL] are common” and that JLI’s sales revenue was growing at an exponential rate.<sup>640</sup>  
 19  
 20

21           515. And beginning no later than January 2018, Altria received explicit warnings about the  
 22 youth appeal of the JUUL product. During a January 3, 2018 meeting between David Wise, Steven  
 23 Schroeder, and Zane Underwood of Altria (Underwood was in communication with KC Crosthwaite at  
 24 the time) and Avail Vapor<sup>641</sup> CEO James Xu and Avail Vapor scientists at Altria’s Headquarters—  
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26 <sup>640</sup> ALGAT0002412177

27 <sup>641</sup> As discussed below, JLI had a partnership with Avail Vapor in which Avail gathered detailed data  
 28 on the sale of JUUL products. Also discussed below, Altria was a minority owner of Avail at the  
 time.

1 specifically, in the “Library” conference room—the Altria representatives requested granular data that  
2 Avail had on the sale of JUUL and JUUL pods. The Altria representatives asked for, and Avail’s  
3 representatives provided, data on the number of sales of certain flavor pods, purchasing patterns, and  
4 the demographics of JUUL users. With regard to the demographics of JUUL users, the Avail  
5 representatives showed the Altria representatives a ski slope diagram indicating that the vast majority  
6 of JUUL purchasers at Avail stores were 18 or 19 years old.  
7

8 516. James Xu of Avail Vapor, who was intimately familiar with JUUL sales and tracked  
9 data related to such sales closely, repeatedly warned Altria executives of the youth appeal of JUUL.  
10 And in November 2018, Xu presented the demographics data on JUUL directly to KC Crosthwaite  
11 (and David Wise), thus providing further evidence that Altria and Altria Client Services knew of JLI’s  
12 role in the youth vaping epidemic prior to Altria’s investment in JLI.  
13

14 517. Notwithstanding their own observations about JUUL’s success with a young  
15 demographic, the data Altria received from Avail which concerned the same, and Xu’s repeated  
16 warnings, Altria and Altria Client Services aggressively pursued a deal with Pritzker and Valani  
17 throughout 2018. Thus, for Altria and Altria Client Services, the large youth make-up of JLI’s market  
18 share was a feature—not a flaw—of the company that it sought to acquire. It is no surprise then that,  
19 even in the face of these warnings and knowledge, Altria continued to aggressively pursue an  
20 investment or potential acquisition of JLI.  
21

22 **2. Altria Worked with Pritzker and Valani to Secure Control of JLI and to Exploit**  
23 **JLI for Their Mutual Benefit.**

24 518. The initial discussions between Altria (and Altria Client Services) and JLI’s leadership  
25 began no later than the week of April 16, 2017 when JLI’s then-CEO Tyler Goldman and Defendant  
26 James Monsees met with Steven Schroder, David Wise, and K.C. Crosthwaite of Altria Client Services  
27 in San Francisco. Crosthwaite, who would later become CEO of JLI, was at the time the Vice President  
28

1 of Strategy and Business Development for Altria Client Services. Goldman spoke again with  
 2 Schroeder, Crosthwaite and Wise on April 27, 2017 to discuss “preliminary thoughts on potential ways  
 3 to work together.”<sup>642</sup>

4           519. Internal documents from the time show that Altria was eyeing JLI as an acquisition  
 5 target. A May 23, 2017 presentation prepared by Altria Client Services for Altria Group, Inc. titled  
 6 “Project Mule: Review of E-vapor Closed-System Opportunities” identified JLI (then PAX Labs) as  
 7 one of two “Potentially Attractive Options.”<sup>643</sup> Among the attractive features of JLI was that JUUL had  
 8 “early market success,” had “projected sales to reach ~\$300 million at year-end 2017.” But Altria  
 9 knew that aggressive growth would be necessary, writing that “[g]enerating an attractive return would  
 10 require consistently strong EBITDA growth.” The presentation also viewed as attractive features that  
 11 JLI offered “mint, berry, tobacco, and cream varieties” with “[i]ndications of additional flavor pods in  
 12 potential pipeline,” and that there “[l]ines outside of vape shops and/or calls to vape shops regarding  
 13 stock are common.” The presentation also revealed that Altria (through an unidentified subsidiary,  
 14 though likely Altria Client Services) had tested “all five flavors” of JUUL pods and was aware of the  
 15 amount of “[n]icotine per puff” in a JUUL pod. Altria Client Services’ conclusions about the  
 16 popularity of JUUL were consistent with the narrative JLI was presenting to potential investors. JLI’s  
 17 pitch deck to investors at the time boasted that “Viral Marketing Wins,” and that JUUL’s super potent  
 18 nicotine formulation was “cornering” the consumables market with the highest customer retention rate  
 19 of any e-cigarette.<sup>644</sup>

20           520. In a May 31, 2017 presentation prepared by Altria Client Services titled “Closed Tank  
 21 for AS Analysis,” Altria Client Services stated that “Nu Mark [a subsidiary of Altria Group, Inc.] and  
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 642 JLI01369848

643 ALGAT0002412177

644 INREJUUL\_00349529.

1 S&BD [a division of Altria Client Services] have engaged in discussions with Pax Labs (Juul) . . .  
2 regarding a potential transaction.”<sup>645</sup> Altria Client Services noted that it was seeking “a meeting of  
3 senior management of both firms in the next few weeks to explore potential interest in a transaction.”  
4 Notably, to Altria Client Services, the “senior management” of JLI was interchangeable with  
5 Defendants Pritzker and Valani, as later in the same presentation Altria Client Services stated that it  
6 was “[s]eeking a meeting between Altria management and Pax lead investors to discuss deal interest.”  
7

8 521. From the very beginning of their negotiations, it was clear to Altria and Altria Client  
9 Services that they were operating within a closing window in which JLI’s sales to youths could  
10 continue unabated. In this same May 23, 2017 presentation, Altria Client Services focused on the  
11 “significant risk” of unfavorable regulations to “this rapidly growing product segment” given that no  
12 PMTAs had been granted for closed-pod products.<sup>646</sup> And as set forth below, Altria and Altria Client  
13 Services were well aware of the public scrutiny of JLI’s youth marketing efforts, which could only  
14 lead to unfavorable regulatory action. Altria and Altria Client Services had to convince Pritzker and  
15 Valani to let Altria acquire or buy into JLI before it was too late.  
16

17 522. In a June 2017 internal presentation prepared by Altria Client Services in anticipation of  
18 the meeting with Pritzker and Valani on a potential deal involving a minority stake in JLI with a call  
19 option (i.e., the ability to acquire JLI at a later date), which Altria had codenamed “Project Tree,”  
20 Altria Client Services identified Valani and Pritzker as “control[ling] majority of voting power [of JLI]  
21 and 44% of economic interests.” Altria Client Services’ stated goal was to “build relationship/rapport”  
22 with Valani and Pritzker at their first meeting and to convey “Altria’s strengths and potential strategic  
23 contributions,” which included “[e]xpertise building premium and iconic brands,” a “[b]est in class  
24 distribution and sales force,” “[e]xperience and resources to navigate a complex [regulatory]  
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27 <sup>645</sup> ALGAT0002412181

28 <sup>646</sup> *Id.*

environment,” “[r]esources to navigate and respond to evolving [government affairs] landscape,” and a “[s]trategic relationship with Philip Morris international.”<sup>647</sup> More important, though, is that the presentation made clear that Altria and Altria Client Services sought to appeal to Pritzker and Valani’s personal interest as investors, and not just the contributions that Altria and its subsidiaries could make for the business of JLI, noting that its potential deal would “[p]rovide return on percentage of equity invested to date; provide opportunity for upside on equity retained.”<sup>648</sup>

523. From the very beginning of their relationship, Altria and Altria Client Services communicated to Pritzker and Valani—who, in turn, communicated to Defendants Bowen, Monsees, and Huh—that they would profit handsomely by accepting Altria’s investment and following its lead in growing the business of JLI. Of course, and as set forth herein, this growth would be pursued through fraud and deceit to both the public and regulators.

524. Beyond controlling the “majority of voting power” of JLI, Pritzker and Valani were the perfect choice to liaise with Altria and Altria Client Services on behalf of the Management Defendants. Pritzker has been long familiar with the tobacco industry from his family’s ownership of chewing-tobacco giant Conwood before selling it to Reynolds American, Inc., a subsidiary of British American Tobacco. And Valani, for his part, was intimately familiar with the business of JLI. He was the company’s first “angel investor” and was a regular presence within the halls of JLI (then Pax Labs) well before the company even had a working product.<sup>649</sup> Notably, Pritzker and Valani are the only Defendants who have admitted to using non-discoverable messaging services to communicate regarding JLI business. Pritzker and Valani both used the “Confide” messaging application, which

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<sup>647</sup> ALGAT0002834151

<sup>648</sup> *Id.*

<sup>649</sup> Alex Norcia, JUUL Founders' First Marketing Boss Told Us the Vape Giant's Strange, Messy Origins, VICE (Nov. 5, 2019), <https://www.vice.com/en/article/43kmwm/juul-founders-first-marketing-boss-told-us-the-vape-giants-strange-messy-origins>.

allows users to send encrypted, ephemeral and screenshot proof messages.<sup>650</sup> And Pritzker and Valani both used Signal, which provides state-of-the-art end-to-end encryption for phone calls and messages.<sup>651</sup>

525. Altria was an ideal model for growing JLI. Altria, including through its subsidiaries, has decades of experience targeting kids through youth-appealing marketing images and themes.<sup>652</sup> It also had decades of experience using flavors to hook kids, and still does so in many international markets.<sup>653</sup> And Altria has decades of experience misleading and lying to the public about their efforts to target kids through marketing and flavors, and making similar fraudulent representations to regulators in order to delay or deter regulations.<sup>654</sup> Yet, because it was a party to the Master Settlement Agreement, many of the tactics used by JLI to target kids were unavailable to Altria. So Altria and Altria Client Services found a new way, drawing on Altria's storied history of unlawful activity to partner to the Management Defendants in JLI's fraud at every turn. The result was bundles of cash for the Management Defendants, a new generation of youth customers for Altria and its subsidiaries, and a public left reeling from a rapidly growing youth vaping epidemic.

526. Following their early discussions with Nu Mark and Altria Client Services, Defendant Valani met with Howard Willard (then-CEO of Altria Group, Inc.) and William Gifford (then-CFO and now CEO of Altria Group, Inc.) on July 28, 2017. They discussed Altria's "perspective on the industry, the future of reduced risk products, and your thoughts on possible collaboration between

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<sup>650</sup> Riaz Valani's Responses and Objections to Plaintiffs' First Set of Interrogatories; Nicholas Pritzker's Responses and Objections to Plaintiffs' First Set of Interrogatories.

<sup>651</sup> *Id.*

<sup>652</sup> Hafez, N., & Ling, P. M. (2005). How Philip Morris built Marlboro into a global brand for young adults: implications for international tobacco control. *Tobacco Control*, 14(4), 262-271. Retrieved from <https://escholarship.org/uc/item/5tp828kn>

<sup>653</sup> Campaign for Tobacco Free Kids, *The Facts about Philip Morris International: Company Is Cause of the Tobacco Problem, Not the Solution* (November 15, 2017), available at [https://www.tobaccofreekids.org/assets/images/content/PMI\\_bad\\_acts.pdf](https://www.tobaccofreekids.org/assets/images/content/PMI_bad_acts.pdf).

<sup>654</sup> *See, e.g., United States v. Philip Morris USA, Inc.*, 449 F. Supp. 2d 1 (D.D.C. 2006).

1 ourselves.”<sup>655</sup> Valani followed up on this meeting with an email on July 31, 2017 connecting Gifford  
 2 with Defendant Pritzker, “convey[ing] our warm regards to Howard,” and offering to “come to  
 3 Richmond” in order “to continue our discussion.”<sup>656</sup>

4 527. Defendants Pritzker and Valani traveled to Richmond less than a month later for an  
 5 August 25, 2017 meeting with Howard Willard and William Gifford.<sup>657</sup> Altria Client Services, in an  
 6 internal presentation dated September 2017, would report that either at this meeting or the July 2017  
 7 meeting, Pritzker and Valani “asked Altria to consider three questions to be addressed at the next  
 8 meeting being scheduled for mid-late September.” Those questions focused on the transaction structure  
 9 and how Altria would assign a value JLI, including its international prospects.<sup>658</sup>

10 528. This presentation also reveals that Pritzker and Valani were open to a deal, and that they  
 11 had “high value expectations,” even though the presentation later notes that Pritzker and Valani  
 12 conveyed that JLI “does not need capital.”<sup>659</sup> Taken together, these observations make clear that  
 13 Pritzker and Valani sought a massive payday for themselves and were not looking out for the strategic  
 14 interests of JLI as a corporation. JLI did “not need” the massive capital infusion that Altria’s  
 15 investment would ultimately provide. It was the investors—i.e., Pritzker, Huh, Valani, Bowen, and  
 16 Monsees—who stood to benefit. It was that promise of an impending personal payout that incentivized  
 17 and motivated the Management Defendants to accept Altria’s and Altria Client Services’ influence and  
 18 control. If their fraudulent schemes were successful, they would reap billions of dollars for themselves,  
 19 regardless of what ended up happening to JLI itself. In this way, Altria and Altria Client Services were  
 20 able to influence JLI well before Altria formalized its investment in December 2018.  
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25 <sup>655</sup> ALGAT0000082947

26 <sup>656</sup> *Id.*

27 <sup>657</sup> *Id.*

28 <sup>658</sup> ALGAT0000112523

<sup>659</sup> *Id.*



1           529. Communications between Altria, Altria Client Services, Pritzker, and Valani were  
 2 frequent and their meetings continued at a regular pace over the next year and a half. For example, on  
 3 December 15, 2017, Howard Willard, William Gifford, and Jay Moore (Senior Vice President of  
 4 Business Development, Altria Client Services) met with the Project Tree investors (Defendants  
 5 Pritzker and Valani) again, this time in White Plains, New York at the Andaz 5<sup>th</sup> Avenue Hotel.<sup>660</sup>  
 6

7           530. By no later than January 25, 2018, Howard Willard directly involved K.C. Crosthwaite,  
 8 who had transitioned from Altria Client Services to become President and CEO of Defendant Philip  
 9 Morris USA, in the negotiations with JLI. For example, on January 25, 2018, Howard Willard sent a  
 10 presentation about “Project Tree” (Altria’s investment in JLI) to K.C. Crosthwaite and the two men  
 11 agreed to discuss the matter the next morning.<sup>661</sup> By June 2018, Crosthwaite would be rewarded  
 12 through a promotion to Senior Vice President, Chief Strategy & Growth Officer for both Altria Client  
 13 Services and Altria Group, Inc. and would assist Willard in quarterbacking the JLI deal.  
 14

15           531. Altria and Altria Client Services and Pritzker and Valani continued their  
 16 correspondence between December 2017 and July 2018. An internal Altria Client Services  
 17 presentation references a letter Altria received regarding the proposed deal in April 2018.<sup>662</sup> On April  
 18 13, 2018, Howard Willard sent an email to Nicholas Pritzker, Riaz Valani, and JLI’s then-CEO Kevin  
 19 Burns, “getting back to you” and requesting a call “early next week” in which Altria would share its  
 20 plans for a “win/win partnership that enables us to fully collaborate” and to “deliver maximum value in  
 21 the long run.” Altria also wanted to discuss the “critical item[]” of “strategy alignment and chemistry  
 22 between our respective operating teams in supportive [sic] of a productive partnership that can create  
 23 substantial value.”<sup>663</sup> Prior to this call, Pritzker, Valani, and Burns on the one hand and Altria (and/or  
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 26 <sup>660</sup> ALGAT0000025589; ALGAT0000041165.

27 <sup>661</sup> ALGAT0000036407; ALGAT0000111921

28 <sup>662</sup> ALGAT0002817348

<sup>663</sup> JLIFTC00639178

Altria Client Services) on the other shared “volume forecast for [JLI’s] business.”<sup>664</sup> The call between Willard, Pritzker, Valani, and Burns took place on April 16, 2018, prior to which Willard sent the JLI parties a “Payment Structure Proposal” and noted that legal counsel need to “connect to assess antitrust risk.”<sup>665</sup> The Payment Structure Proposal provided various scenarios for a potential 50.1% investment by Altria in JLI, each of which contemplated billions of dollars in “Investor Value” for JLI’s investors (i.e., the Management Defendants).<sup>666</sup> Valani forwarded this document to attorney Jorge A. del Calvo at Pillsbury Winthrop Shaw Pittman LLP who then forwarded the document to Defendants Adam Bowen and James Monsees.<sup>667</sup>

532. Willard followed up on this call with a May 3, 2018 Proposal Letter to Pritzker, Valani, and Burns.<sup>668</sup> The Proposal Letter also contemplated a 50.1% investment that contemplated majority of payment to be made after antitrust approval and a separate “earn-out payment” of “up to \$3.5 billion” to the “selling JUUL shareholders”; Willard described the valuation as “compelling to your investors, particularly taking into account the substantial regulatory and legal contingencies relating to eVapor generally and JUUL products specifically.”<sup>669</sup> Notably, Willard wrote that Altria was “open to discussing the exact terms of [the earn-out] payment **but prefer to discuss it in person.**”<sup>670</sup> The letter goes on to further state that Altria was “prepared to discuss offering a series of liquidity events for the current JUUL investors with respect to their residual 49.9% ownership interest.”<sup>671</sup> This letter is yet another example of the ways in which Altria sought to influence Pritzker and Valani and indirectly control JLI, with the promise of a multi-billion dollar payment if they were to get JLI to go along with

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<sup>664</sup> JLIFTC00638936; ALGAT0005452943

<sup>665</sup> ALGAT0004031391

<sup>666</sup> JLIFTC01082372

<sup>667</sup> JLIFTC01082370

<sup>668</sup> ALGAT0004030132

<sup>669</sup> ALGAT0004031645-46

<sup>670</sup> *Id.* (emphasis added)

<sup>671</sup> *Id.*

1 an Altria investment. Willard emphasized that they were aligned on a “strategic vision as to how to  
 2 grow the JUUL business rapidly.” Altria sought to control the JLI business, with Willard writing that  
 3 “we would require that, following the first two payments outlined above, Altria (a) owns a majority of  
 4 the JUUL equity and voting rights and (b) **has the right to control generally the JUUL business.**”<sup>672</sup>

5 533. Altria and Altria Client Services viewed these meetings, and Valani in particular, as a  
 6 “back-channel” to communicate with the decision-makers behind JLI—i.e., the Management  
 7 Defendants. In a presentation by Altria Client Services in June 2018 to Altria Management regarding  
 8 preparations for a July 13, 2018 meeting with Pritzker and Valani, Altria Client Services considered a  
 9 “[b]ack-channel with Riaz and / or [Goldman Sachs] in advance of meeting.”<sup>673</sup>

10 534. Altria and Altria Client Services were pursuing this “back-channel” even though the  
 11 lawyers for JLI and Altria had grown concerned over Pritzker and Valani’s roles in the negotiations.  
 12 On April 26, 2018, Pritzker sent an email to Howard Willard, copying Valani, regarding a “standstill”  
 13 in the negotiations. Pritzker wrote: “[O]ur lawyers are apparently at a standstill over the standstill (in  
 14 the NDA). I understand that you want the continuing right to talk to Riaz and me. That’s just fine, and  
 15 we are both happy to talk to y’all any time, but it needs to be limited to in our capacity as directors: we  
 16 need to avoid any appearance of conflict. I can’t imagine this makes a difference. If not, can you  
 17 intercede so we can get this going, and if so perhaps you could give us a call to explain.” This email  
 18 makes clear that Willard wanted unfettered access to his back-channel of Pritzker and Valani, and that  
 19 Altria and Altria Client Services had not been communicating with Pritzker and Valani “in [their]  
 20 capacity as directors.”<sup>674</sup> Again, Altria and Altria Client Services were appealing to Pritzker and  
 21 Valani’s personal financial interest, which inevitably affected the actions they took as directors of JLI.  
 22  
 23  
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26 <sup>672</sup> *Id.* (emphasis added)

27 <sup>673</sup> ALGAT0002817356

28 <sup>674</sup> ALGAT0000113109

535. Howard Willard responded that he conveyed “our joint view” to Altria’s counsel and then suggested a meeting on May 6, 2018 involving lawyers for both sides. Willard also set up a separate dinner or breakfast for himself and Pritzker.<sup>675</sup> Valani was not available on this date, so the meeting was rescheduled, and the back-channeling continued.<sup>676</sup>

536. The parties met again in July 2018. According to the June 2018 presentation by Altria Client Services, at the July 13, 2018 meeting with Pritzker and Valani, Altria and Altria Client Services planned to push for a deal in which Altria would be able to “appoint[] majority of board” of JLI and have control of “board decisions by majority vote (including hiring/removal of CEO).” Altria was planning on structuring part of its payment for its ownership in JLI to include a separate “PMTA payment” of “\$1 - \$3 Billion” which Altria Client Services conceded was, in part “to compensate Tree [JLI] investors for potential upside in the business.”<sup>677</sup>

537. The same presentation revealed that Altria or Altria Client Services was planning on engaging with JLI regarding its “Youth vaping prevention plan” by August 10, 2018, with Altria or Altria Client Services preparing its own plan for JLI.<sup>678</sup>

538. The July 13, 2018 meeting was attended by Howard Willard, Billy Gifford, and K.C. Crosthwaite.<sup>679</sup>

539. At some point after negotiations had been ongoing between Altria, Altria Client Services, Pritzker, and Valani, Kevin Burns, then-CEO of JLI, joined the negotiations. By this point, Pritzker and Valani had already pushed Altria and Altria Client Services to offer terms highly favorable to the individual investors in JLI, regardless of the true benefit to the company. And by

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<sup>675</sup> *Id.*

<sup>676</sup> ALGAT0000113121

<sup>677</sup> *Id.*

<sup>678</sup> *Id.*

<sup>679</sup> *Id.*

1 virtue of their control of JLI, the Management Defendants ensured that Kevin Burns went along with  
2 the deal.

3 540. On August 1, 2018, Pritzker, Valani and Burns met with Howard Willard and William  
4 Gifford at the Park Hyatt Hotel in Washington, D.C., to further discuss the terms of an impending  
5 deal.<sup>680</sup> Following this meeting, Valani and Pritzker were working the machinery of JLI to obtain the  
6 information that Altria needed to consummate their deal. On August 7, 2018, Tim Danaher (CFO of  
7 JLI) sent Burns, Valani, and Pritzker a “Summary Cap Table,” which Burns forwarded to Howard  
8 Willard with a comment that he would “call you tomorrow.” Howard Willard forwarded this email to  
9 K.C. Crosthwaite, who at this point was intimately involved at the negotiations between Altria,  
10 Pritzker and Valani.<sup>681</sup>

11  
12 541. Around this time, K.C. Crosthwaite also made explicit Altria’s goal to influence and  
13 control JLI. In a presentation by Crosthwaite to Altria Group, Inc. at the Board of Directors’ Strategy  
14 Session on August 22, 2018, Crosthwaite indicated that Altria should keep pursuing their “strategic  
15 investment in JUUL” because it would give Altria “[s]ignificant ownership and influence in U.S. e-  
16 vapor leader.”<sup>682</sup> This presentation reveals that Altria sought to require JLI to seek “Altria approval” of  
17 its “Youth vaping prevention plan.”  
18

19 542. The negotiations between JLI, Altria, and Altria Client Services continued full steam  
20 from August 2018 through the announcement of the investment in December 2018. In an August 14,  
21 2018 email from Nicholas Pritzker to Howard Willard and Billy Gifford, copying Kevin Burns and  
22 Valani, Pritzker wrote that “Riaz [Valani] met with Dinny [Devitre, Altria Group Board of Directors,  
23 Chair of Finance Committee] and that the two of you and maybe Dinny as well may be interested in  
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26 <sup>680</sup> ALGAT0003443977

27 <sup>681</sup> ALGAT0003352121; ALGAT0003352122

28 <sup>682</sup> ALGAT0003327931.

1 meeting with us in San Francisco this Saturday.”<sup>683</sup> Willard responded that he, Billy Gifford, K.C.  
 2 Crosthwaite and Dinny Devitre would attend the meeting. Pritzker responded that lawyers should  
 3 attend, though Kevin Burns emailed him separately that he “wouldn’t add lawyers to the meeting but  
 4 would put them in back rooms for support,” and that it “[l]ooks like we are a go pending Riaz’s  
 5 meeting today.” In advance of the Saturday meeting, Willard set up a separate call with Nicholas  
 6 Pritzker to discuss the remaining negotiating points. Burns and Valani were aware of, and possibly  
 7 included in, this call.<sup>684</sup> So, in August 2018, information was being exchanged between Altria and  
 8 Altria Client Services and JLI at a rapid pace, and numerous meetings between Valani, Pritzker, and  
 9 Altria and/or Altria Client Services were taking place.

11 543. On October 25, 2018, Howard Willard, Billy Gifford, KC Crosthwaite, and Murray  
 12 Garnick participated in a call with Pritzker, and possibly Valani and Kevin Burns, to discuss the  
 13 ongoing negotiations.<sup>685</sup> Pritzker, Valani, and Burns also met privately with Howard Willard and other  
 14 Altria (and Altria Client Services) executives on October 28, 2018 for a dinner at Dinny Devitre’s  
 15 home to discuss the deal, while sending their lawyers to a separate meeting that same night.<sup>686</sup>

17 544. Also on October 25, 2018, the day Altria and Pritzker, Valani and Burns held a call to  
 18 discuss the deal, Howard Willard shared with Pritzker and Valani the letter that Altria had sent to the  
 19 FDA, which was a key part of the Management Defendant’s and Altria’s scheme to deceive regulators  
 20 and the public and keep youth-appealing Mint Juul pods on the market long after other flavors were  
 21 removed, as set forth below.<sup>687</sup>

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25 <sup>683</sup> JLI01389789

26 <sup>684</sup> JLI01389792

27 <sup>685</sup> JLI10518738

<sup>686</sup> *Id.*

<sup>687</sup> JLIFTC00653389

545. Over the following six weeks prior to the announcement of Altria’s investment in JLI, K.C. Crosthwaite became even more hands on, leading the aggressive diligence efforts on behalf of Altria and Altria Client Services. October 30, 2018, K.C. Crosthwaite sent JLI a preliminary diligence list which requested a list of all material intellectual property, including all patents (which, notably, would have included the ‘895 patent revealing that JLI’s nicotine content was misrepresented to the public; of course, Altria already knew this because it had undertaken its own testing of the nicotine strength of JUUL pods, as set forth above). It also included requests for “materials related to underage use prevention, underage product appeal, and underage use.” JLI agreed to produce this information by November 9, 2018.<sup>688</sup> Crosthwaite and Kevin Burns, as well as others from Altria, Altria Client Services, and JLI, held a call to discuss these diligence requests on November 2, 2018.<sup>689</sup>

546. By this point, Pritzker and Valani had brought in other senior leadership of JLI to get the deal across the finish line. Kevin Burns, Tim Danaher, Bob Robbins (President, JUUL Americas), Jerry Masoudi (Chief Legal Officer), Mark Jones (Associate General Counsel), Ashley Gould, and Defendants Bowen and Monsees attended meetings with Altria and Altria Client Services from November 15, 2018 through November 17, 2018.<sup>690</sup> As set forth below, the deal was finally consummated—and Pritzker, Valani, Huh, Bowen and Monsees handsomely rewarded—in December 2018.

### **3. Altria Participated in and Directed the Fraudulent Acts of JLI Designed to Protect the Youth Market for JUUL**

#### **a. Altria Participated in and Directed JLI’s Make the Switch Campaign.**

547. Altria did not simply take in information regarding JLI’s youth sales passively while it pursued ownership of JLI. It also worked to ensure that the Management Defendants would take steps

<sup>688</sup> JLI01374739; JLI01374736

<sup>689</sup> JLI01374736

<sup>690</sup> ALGAT0003776795



1 to continue JUUL’s exponential sales growth and to stave off any regulation that might hinder that  
2 growth.

3 548. Specifically, Altria worked behind the scenes to bolster JLI’s public narrative claiming  
4 that JUUL was a cessation device intended for adult smokers. Well before JLI launched the “Make the  
5 Switch” campaign in January 2019, Altria was pushing the narrative that e-vapor products could help  
6 adult smokers “switch” off of combustible cigarettes. In an October 25, 2018 letter from Howard  
7 Willard to the FDA—sent while Altria was finalizing the terms of its deal with Pritzker, Valani, and  
8 Burns—Willard touted that “We believe e-vapor products present an **important opportunity to adult**  
9 **smokers to switch from combustible cigarettes.**”<sup>691</sup> As noted below, Howard Willard shared this  
10 letter with Pritzker and Valani the same day he sent it to the FDA.  
11

12 549. Moreover, Altria’s partners within JLI—Valani and Pritzker—were involved in  
13 reviewing and approving the Make the Switch Campaign, allowing Altria to influence the marketing  
14 efforts of JLI. For example, on December 27, 2018, Kevin Burns forwarded an email from Chelsea  
15 Kania to Pritzker and Valani with “assets for the [Make the Switch] campaign including 20/60 radio  
16 spots and 30/60 tv spots,” and the next day Valani directed which videos should be aired as part of the  
17 campaign.<sup>692</sup>  
18

19 **b. Altria Participated in and Directed JLI’s Fraudulent Scheme to Keep Mint**  
20 **on the Market.**

21 550. Altria and Altria Client Services also came to the bargaining table with Pritzker and  
22 Valani armed with important knowledge – that flavors would be crucial to JLI’s continued ability to  
23 target and sell to youth users and wanting to ensure JLI proactively and fraudulently protect those  
24 flavors.  
25

26 <sup>691</sup> Letter from Howard A. Willard III, Altria, to Dr. Scott Gottlieb, FDA, at 1 (Oct. 25, 2018)  
27 (emphasis added).

28 <sup>692</sup> JLI10071280; JLI10071228

551. Within weeks of the FDA’s July 2017 notice of proposed rulemaking (“ANPR”) regarding ENDS flavor regulations, Gal Cohen proposed that JLI and others “build a coalition and common agenda to influence or challenge FDA’s approach” to regulating flavors.<sup>693</sup> Foreshadowing their joint effort to portray Mint as a traditional tobacco or menthol flavor (as opposed to a flavor that appealed to kids), Cohen asked whether Altria and JLI might respond to the FDA with “a common approach and understanding,” and asked if the companies might find “a damage limitation option” concerning the regulation of ENDS flavors.<sup>694</sup>

552. Ashley Gould, copying Adam Bowen, responded that the “Consensus seems to be there is a value in participating in a discussion. *Less sure that participating in a joint effort to influence FDA makes sense, so please don't commit to that at the meeting.*” In the same email, Gould seemingly reversed course and gave Cohen the go-ahead to meet with Altria (or Altria Client Services) in pursuit of a damage limitation option “(but maybe best if the group is smaller).”<sup>695</sup>

553. Cohen attended a September 15, 2017 Global Tobacco Networking Forum (“GTNF”) industry event with James Xu, CEO of Avail Vapor, and Altria Client Services’ Phil Park. The small group Gould recommended seems to have materialized, as a September 27, 2017 email from Cohen notes that “Clive Bates organized a group that met on Friday with reps from Altria etc. . . they want to help drive standards definitions.”<sup>696</sup>

554. Through this meeting, Altria knew that JLI would be a good partner because it shared a similar vision of preserving flavors. Indeed, Altria (or Altria Client Services) went into this meeting with Cohen expecting to find a willing partner on flavors. As noted above, a May 2017 presentation

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<sup>693</sup> JLI10678579

<sup>694</sup> *Id.*

<sup>695</sup> *Id.*

<sup>696</sup> JLI10679070

1 from Altria Client Services touted that JLI offered “mint, berry, tobacco, and cream varieties” with  
 2 “[i]ndications of additional flavor pods in potential pipeline.”<sup>697</sup>

3 555. The following year, 2018, when it became clear that the FDA was increasing scrutiny of  
 4 the e-vapor industry, JLI, the Management Defendants, and Altria publicly defended mint flavoring as  
 5 a substitute for menthol cigarette smokers, when in fact JLI’s studies—which had been made available  
 6 to Altria and Altria Client Services as part of due diligence for its ultimate investment in JLI—  
 7 indicated that mint users are not former menthol smokers and that mint pods were as popular with  
 8 teens as Mango pods. By fighting to keep mint as the last flavor on the market, the cigarette industry  
 9 could continue to appeal to non-smokers, including youth. JLI and the Management Defendants  
 10 coordinated with Altria to pursue a fraudulent scheme to persuade the FDA into leaving the mint flavor  
 11 on the market, willingly sacrificing other flavors in the process as a purported show of commitment to  
 12 youth prevention.  
 13

14 556. Altria’s specific fraudulent acts with regard to this fraudulent scheme are detailed  
 15 further below.  
 16

17 **4. JLI, the Management Defendants and Altria Coordinated to Market JUUL in**  
 18 **Highly-Visible Retail Locations**

19 557. JLI, the Management Defendants, and Altria’s coordination continued in other ways  
 20 throughout 2018 as they prepared for Altria’s equity investment in JLI.

21 558. A key aspect of this early coordination was Altria’s acquisition of shelf-space that it  
 22 would later provide to JLI to sustain the exponential growth of underage users of JUUL products. By  
 23 acquiring shelf space, Altria took steps to ensure that JUUL products would be placed in premium  
 24 shelf space next to Marlboro brand cigarettes, the best-selling cigarette overall and by far the most  
 25 popular brand among youth.  
 26

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27 <sup>697</sup> ALGAT0002412177  
 28 PLAINTIFF’S COMPLAINT

559. Altria’s investment was not for its own e-cigarette products. Altria spent approximately \$100 million in 2018 to secure shelf-space at retailers for e-cigarette products—purportedly for the MarkTen e-cigarette that Altria stopped manufacturing in 2018, and its pod-based MarkTen Elite, which it launched on a small scale in only 25,000 stores. By comparison, the 2014 launch of the original MarkTen resulted in product placement in 60,000 stores in the first month in the western United States alone. Yet Altria’s payments for shelf space were a mixture of “cash and display fixtures in exchange for a commitment that its e-cigarettes would occupy prime shelf space for at least two years.”

560. In reality, Altria spent approximately \$100 million on shelf-space in furtherance of expanding the e-cigarette market, including JLI’s massive, ill-gotten market share.

561. When Altria later announced its \$12.8 billion investment in JLI, part of the agreement between the two companies was that Altria would provide JLI with this premium shelf space.

562. Altria’s purchase of shelf space in 2018 and its subsequent provision of that space to JLI shows how Altria, JLI, and the Management Defendants were coordinating even before Altria announced its investment in JLI. Altria’s actions ensured that, even after public and regulatory scrutiny forced JLI to stop its youth-oriented advertising, JUUL products would still be placed where kids are most likely to see them—next to Marlboros, the most iconic, popular brand of cigarettes among underage users—in a location they are most likely to buy them—retail establishments.

## **5. Altria Works with the Management Defendants to Direct JLI’s Affairs and Commit Fraud.**

563. In December 2018, Altria formalized its relationship with JLI’s leadership by making a \$12.8 billion equity investment in JLI through Altria Group and its wholly-owned subsidiary, Altria Enterprises<sup>698</sup>, the largest equity investment in United States history. This arrangement was profitable

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<sup>698</sup> Archive00760162

1 for both Altria as well as Defendants Monsees, Bowen, Pritzker, Huh, and Valani. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]<sup>699</sup> In turn, Altria and its subsidiaries received millions of loyal teen customers, customers

8 Altria was no longer able to get through the sale of its own cigarette products. The Management

9 Defendants' payout reflects their active role in JLI's growth, not just a return on their investment.

10 564. In July 2018, JLI's valuation was approximately \$15 billion.<sup>700</sup> But, in December 2018,

11 Altria's investment of \$12.8 billion for a 35% stake in the company reflected a valuation of

12 approximately \$38 billion—more than two and a half times the valuation just five months earlier.

13 Defendants Monsees, Bowen, Pritzker, Huh, and Valani thus saw the value of their investments in JLI

14 skyrocket as a result of the Altria agreement, allowing them to cash out via a special dividend and

15 bonus, as well as through stock sales that were not available to other of JLI's minority shareholders.<sup>701</sup>

16 This investment further intertwined JLI and the Altria.

17

18 565. While Pritzker, Valani, and Altria carefully structured the deal to avoid the appearance

19 of Altria's control of JLI, for fear of drawing regulatory and public scrutiny, the structure does not tell

20 the whole story. Altria and Altria Client Services had been involved in directing the affairs of JLI

21 indirectly long before its investment, and the Altria Defendants' involvement was even more direct

22 following the investment. And although Altria took only a 35% share initially, it retained the option to

23

24

25 <sup>699</sup> JLI11387060.

26 <sup>700</sup> <https://www.theverge.com/2018/7/3/17529442/juul-vapes-nicotine-electronic-cigarettes-addiction-funding>

27 <sup>701</sup> Tiffany Kary, *JUUL Founders Sued for Self-Dealing Over Altria's \$12.8 Billion*, Bloomberg (Jan. 13, 2020), <https://www.bloomberg.com/news/articles/2020-01-13/juul-founders-sued-for-self-dealing-over-altria-s-12-8-billion>.

1 buy JLI outright in 2022. This promise of a future purchase gave it significant influence over the  
 2 actions of JLI's leadership—i.e., the Management Defendants who stood to profit even more  
 3 handsomely from an ultimate acquisition by Altria.

4  
 5 566. While JLI and Altria remain separate corporate entities in name, following its equity  
 6 investment in JLI, the Altria Defendants worked with the Management Defendants, and Pritzker and  
 7 Valani in particular, to forge Altria and JLI forged even greater significant, systemic links, *i.e.*, shared  
 8 leadership, contractual relationships, financial ties, and continuing coordination of activities with JLI's  
 9 leadership. Because Altria and its subsidiaries could no longer market Altria's products to children or  
 10 lie to adults about the safety, addictiveness, or health effects of its own cigarettes as result of prior  
 11 tobacco litigation and regulation, Altria took even greater control of JLI in order to accomplish both of  
 12 these goals through that company.

13  
 14 **a. Altria Installs Its Own Executives into Leadership Positions to Direct the  
 Affairs of JLI.**

15 567. To exercise its influence and control of JLI, Altria worked with Pritzker and Valani to  
 16 install two key Altria executives into leadership positions at JLI: K.C. Crosthwaite and Joe Murillo:

- 17  
 18 a. K.C. Crosthwaite, who was Vice President of Altria Client Services when  
 19 the company carried out a study that would later be used by Altria to shield  
 20 JUUL's Mint pods from federal regulation, is now JLI's CEO. Before  
 21 joining JLI, Crosthwaite was Altria's and Altria Client Services' Chief  
 22 Growth Officer and played a major role in Altria's investment in JLI, and  
 23 had experience in the marketing of tobacco products from his time as  
 24 president of Philip Morris USA.
- 25 b. Joe Murillo, who launched the MarkTen e-cigarette line at Altria (as  
 26 President and General Manager of Nu Mark LLC) and more recently  
 27 headed regulatory affairs for Altria (as Senior Vice President of  
 28 Regulatory Affairs of Altria Client Services) , is now JLI's chief  
 regulatory officer.<sup>702</sup> A 24-year career Altria executive, Murillo

702 Jennifer Maloney, *JLI Hires Another Top Altria Executive*, Wall St. J. (Oct. 1, 2019),  
<https://www.wsj.com/articles/juul-hires-another-top-altria-executive-11569971306>.

previously ran Altria's e-cigarette business, Nu Mark, "before Altria pulled its e-cigarettes off the market as part of its deal with J[UUL]." <sup>703</sup>

568. As mentioned above, K.C. Crosthwaite played a major role in Altria's investment in JLI. Crosthwaite frequently communicated with Altria Group's senior management about Altria's investment. For example, on January 25, 2018, Altria Group's CEO, Howard Willard sent a presentation about "Project Tree" (Altria's investment in JLI) to K.C. Crosthwaite (who was, at the time, President of Defendant Philip Morris USA) and the two men agreed to discuss the matter the next morning. <sup>704</sup> Then in July 2018, Crosthwaite (who, at the time, had transitioned to his role as Senior Vice President and Chief Growth Officer of Altria Client Services and Altria Group) was also listed as one of three "meeting participants," along with Willard and Altria Group's CFO, Gifford, for a July 13, 2018 meeting with JLI's leadership about the deal between Altria and JLI. <sup>705</sup> In addition, Crosthwaite led Altria Group's due diligence efforts, <sup>706</sup> signed the investment exclusivity agreement on behalf of Altria Group shortly before the deal was publicly announced, <sup>707</sup> and was listed as the Altria point of contact for any "notices, requests and other communications" regarding the Services Agreement between Altria Group and JLI. <sup>708</sup>

569. While working on this investment, Altria, and Crosthwaite himself, discussed their goal to influence and control JLI. For example, in a presentation by Crosthwaite to Altria Group, Inc. at the Board of Directors' Strategy Session on August 22, 2018, Crosthwaite indicated that Altria should keep pursuing their "strategic investment in JUUL" because it would give Altria "[s]ignificant ownership and influence in U.S. e-vapor leader." <sup>709</sup>

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<sup>703</sup> *Id.*

<sup>704</sup> ALGAT0000036407; ALGAT0000111921.

<sup>705</sup> ALGAT0002817348.

<sup>706</sup> JLI01374736; JLI01416851.

<sup>707</sup> JLI01392046.

<sup>708</sup> Archive00760280.

<sup>709</sup> ALGAT0003327931-33.



1           570. After the deal was official, in January 2019, Altria appointed Crosthwaite to the JLI  
 2 Board of Directors.<sup>710</sup> Crosthwaite was required to be a non-voting observer until the FTC gave the  
 3 Altria investment in JLI clearance, which has yet to occur. Altria planned to use this role to help guide  
 4 JLI. According to Crosthwaite, Altria was focusing on “ensur[ing] JUUL maintains long-term  
 5 leadership in global E-vapor by leveraging Altria’s best-in-class infrastructure and providing guidance  
 6 through board participation.”<sup>711</sup>

7  
 8           571. However, despite his now official role, Crosthwaite continued to meet privately with  
 9 Pritzker and Valani. For example, on January 16, 2019, Pritzker asked Crosthwaite if he would meet  
 10 with Valani and Pritzker after the JUUL Board meeting later that month. Crosthwaite promptly  
 11 reported back to Willard that he “agreed to have dinner with Nick and Riaz on the 31st after the JUUL  
 12 BOD meeting.”<sup>712</sup>

13  
 14           572. Crosthwaite continue to be involved in meetings between Altria and the Management  
 15 Defendants as his time as an “observer” on the JLI Board went on. On March 26, 2019, Willard,  
 16 Gifford, and Crosthwaite and a few other Altria employees flew to San Francisco to attend a dinner  
 17 with the JLI leadership, including Bowen, Monsees, Pritzker, Valani, and others.<sup>713</sup> After the dinner,  
 18 Pritzker emailed Willard, Gifford, and Crosthwaite, telling them that “[w]e truly appreciate our  
 19 partnership, and look forward to an even deeper collaboration in the future.”<sup>714</sup>

20  
 21           573. To facilitate that “deeper collaboration” and its control of JLI, Altria decided to install  
 22 one of its own career executives, Crosthwaite, as the head of JLI. In furtherance of that goal, in April  
 23 2019, Howard Willard told Pritzker that he believed JLI would benefit from “a new direction.”<sup>715</sup> That

24  
 25 <sup>710</sup> JLI01416851.

26 <sup>711</sup> ALGAT0002856951.

27 <sup>712</sup> ALGAT0000114034.

28 <sup>713</sup> ALGAT0000080766.

<sup>714</sup> ALGAT0003889812.

<sup>715</sup> JLI01416851.

1 same month, Pritzker invited Crosthwaite to Pritzker's house in San Francisco for a weekend visit.<sup>716</sup>  
 2 During this visit, according to JLI, Crosthwaite expressed concerns about JLI's leadership's ability to  
 3 guide JLI, and Pritzker and Crosthwaite discussed Crosthwaite potentially joining JLI in some  
 4 capacity.

5 574. As the summer approached, JLI admits that "various Board members" continued to  
 6 communicate with Crosthwaite and that "the Board valued his perspective on JLI's business," in other  
 7 words, Altria's perspective on JLI's business.<sup>717</sup> In his discussions with the Board, Crosthwaite  
 8 continued to express a view that JLI would benefit from a change in leadership.<sup>718</sup>

9 575. While Altria had not yet officially installed Crosthwaite as JLI's CEO, that did not  
 10 prevent them from giving JLI's leadership, and specifically Pritzker and Valani, advice and direction  
 11 about how to run the company. On May 26, 2019, Pritzker emailed Willard asked whether he was  
 12 "coming to the youth/PMTA meeting in DC June 14" and "[i]f so, do you think we can find a time for  
 13 you, Riaz, and I to get together separately?" Willard responded "Yes and yes. We can arrange the plan  
 14 next week."<sup>719</sup>

15 576. Similarly, on July 9, 2019, Willard emailed Valani, Pritzker, JLI's then-CEO Kevin  
 16 Burns and cc'd Crosthwaite giving JLI advice and feedback on their "Youth Vaping Prevention Plan."  
 17 Willard stated that the "plan represents a modest improvement rather than an impressive 'new day.'"  
 18 Willard also gave them advice and direction, telling them to "[k]eep working on it, but do not make a  
 19 big announcement at this time" but that their proposed "internal changes sound reasonable and  
 20 appropriate."<sup>720</sup>

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 25 <sup>716</sup> JLI01416851.

26 <sup>717</sup> JLI01416851.

27 <sup>718</sup> JLI01416851.

28 <sup>719</sup> ALGAT0003285214.

<sup>720</sup> ALGAT0003279064.

1           577. In June 2019, Howard Willard spoke to Pritzker and Valani again, along with Frankel  
 2 (who “[s]erves as Mr. Valani’s second board seat”<sup>721</sup>). Willard reiterated that he believed JLI would be  
 3 benefit from a new direction.<sup>722</sup> Willard conveyed explicitly that “JLI could benefit from Mr.  
 4 Crosthwaite’s leadership.”<sup>723</sup> Willard “expressed his view that Mr. Crosthwaite’s unique experience  
 5 would make him a strong leader for JLI.”<sup>724</sup>

7           578. After this conversation, on July 22, 2019, a draft press release was created and sent to  
 8 Crosthwaite announcing Crosthwaite as JLI’s new CEO.<sup>725</sup> The draft press release states that  
 9 Crosthwaite was “most recently a JUUL Board Advisor” and includes a quote from Defendant  
 10 Monsees, explaining that “Adam [Bowen] and [Monsees] . . . have had the pleasure of getting to know  
 11 K.C. through our partnership with Altria and have already benefitted tremendously from his strategic  
 12 insights as a Board observer.”<sup>726</sup> This document was sent to Crosthwaite by Carina Davidson, the  
 13 President of communications firm Abernathy MacGregor, with whom Altria works regularly.<sup>727</sup>  
 14 Crosthwaite reviewed the documents and discussed it with Davidson, including asking her to “tone  
 15 down the language re: Kevin” Burns, JLI’s then-CEO, who Crosthwaite would be replacing.<sup>728</sup>

17           579. On August 23, 2019, Valani met with Crosthwaite again to discuss “business and non-  
 18 business topics.”<sup>729</sup>

19           580. Throughout the month of September, Defendant Valani and Defendant Pritzker  
 20 continued to meet with Altria about Crosthwaite taking over leadership of JLI. For example, on  
 21

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22 <sup>721</sup> JLI00417815.

23 <sup>722</sup> JLI01416851.

24 <sup>723</sup> JLI01416851.

24 <sup>724</sup> JLI01416851.

25 <sup>725</sup> ALGAT0005389689.

26 <sup>726</sup> ALGAT0005389689.

26 <sup>727</sup> ALGAT0005389689; ALGAT0005389687; *see also, e.g.*, ALGAT0003360382,  
 27 ALGAT0003778898.

27 <sup>728</sup> ALGAT0005410667.

28 <sup>729</sup> JLI01416851.

September 11, 2019, Valani and Pritzker spoke with Willard, about “the challenges facing JLI” and Willard “expressed concern about Mr. Burns’ [JLI’s then-CEO] leadership” and “expressed his opinion that JLI would benefit from a new direction.”<sup>730</sup> As mentioned above, Willard had previously suggested Crosthwaite be installed in a leadership role. Four days later, on September 15, 2019, Crosthwaite met with Valani and Frankel “to further discuss the possibility of Mr. Crosthwaite joining JLI.”<sup>731</sup> During this meeting Crosthwaite told Valani and Frankel that he also wanted them to consider hiring Joe Murillo, then the head of regulatory affairs for Altria, as Chief Regulatory Officer for JLI.

<sup>732</sup>

581. On September 17, 2019, Valani met with Crosthwaite in New York to further discuss Crosthwaite taking over as the formal leader of JLI.<sup>733</sup> Valani and Frankel met with Crosthwaite again on September 18, 2019, in New York.<sup>734</sup> On September 19, 2019, Bowen, Monsees, Pritzker, and Valani met with Crosthwaite for dinner in San Francisco.<sup>735</sup> On September 20, 2019, Pritzker and Valani met with Crosthwaite again in San Francisco to discuss the details of Crosthwaite’s leadership role.<sup>736</sup>

582. On September 22, 2019, Pritzker, Valani, and Frankel spoke to Crosthwaite over the phone about taking over leadership at JLI.<sup>737</sup> Crosthwaite continued to express the view that JLI would benefit from leadership changes and reiterated his view that JLI should hire Murillo, should Crosthwaite join JLI. While Crosthwaite expressed some doubts about his position, the parties agreed

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<sup>730</sup> JLI01416851.

<sup>731</sup> JLI01416851.

<sup>732</sup> JLI01416851.

<sup>733</sup> JLI01416851.

<sup>734</sup> JLI01416851.

<sup>735</sup> JLI01416851.

<sup>736</sup> JLI01416851.

<sup>737</sup> JLI01416851.

1 to continue to discuss the matter.<sup>738</sup> Ultimately, the Board met that day and resolved to offer  
 2 Crosthwaite a leadership position at JLI.<sup>739</sup>

3 583. On September 24, 2019, JLI's Board of Directors voted to accept the resignation of  
 4 current JLI CEO Kevin Burns, approve Crosthwaite's appointment as CEO of JLI and appoint him to  
 5 the Board.<sup>740</sup> That same day, Crosthwaite told "JLI to begin preparations on an offer of employment  
 6 for Murillo."<sup>741</sup>

7  
 8 584. Crosthwaite formally took over as CEO of JLI on September 25, 2019.<sup>742</sup> Murillo  
 9 accepted a position as JLI's Chief Regulatory Officer on September 29, 2019 and began work on  
 10 October 7, 2019.<sup>743</sup> Altria's plan was a success.

11 **b. Altria Furthered the JLI Enterprise by Participating in and Directing the**  
 12 **Marketing and Distribution of JUUL Products.**

13 585. In addition to installing its own executives as senior leadership at JLI, after its  
 14 investment, the Altria Defendants worked with JLI's leadership to assist JUUL's growth through  
 15 marketing and distribution, despite its knowledge that JUUL's growth was based on selling to minors  
 16 and lying to adults about JUUL products. The Altria Defendants helped JUUL thrive in the areas of  
 17 "direct marketing; sales, distribution and fixture services; and regulatory affairs."<sup>744</sup> This included,  
 18 among other things:

- 19  
 20 a. "Piloting a distribution program to provide long haul freight, warehouse  
 21 storage and last mile freight services."  
 22 b. "Making available [Altria's] previously contracted shelf space with  
 23 certain retailers," thus allowing JUUL products to receive prominent

24 <sup>738</sup> JLI01416851.

25 <sup>739</sup> JLI01416851.

26 <sup>740</sup> JLI01416851. Pursuant to JLI's by-laws, the Company's CEO is automatically appointed to the  
 27 Board.

28 <sup>741</sup> JLI01416851.

<sup>742</sup> JLI01416851.

<sup>743</sup> JLI01416851.

<sup>744</sup> Letter from Howard Willard III, Altria Senator Durbin, et. al., at 11 (Oct. 14, 2019).

placement alongside a top-rated brand of combustible cigarettes, Marlboro, favored by youth.

- c. “Executing direct mail and email campaigns and related activities. . . .”
- d. “Leveraging Altria’s field sales force to . . . provide services such as limited initiative selling, hanging signs, light product merchandising, and surveys of a subset of the retail stores that Altria calls upon.”
- e. “Providing regulatory affairs consulting and related services to [JUUL] as it prepares its PMTA application.”<sup>745</sup>

586. In an attempt to legitimize its support of JUUL’s growth and despite public and regulatory concern, the Altria Defendants entered into a number of formal agreements with JLI. These agreements included collaboration with Defendants Altria Group Distribution Company, Altria Client Services, and Philip Morris USA, each known in the agreement as “the Altria Company.” Each agreement listed Altria Group, Inc. as the “Provider” and was managed by Theodore J. Edlich IV of Altria Client Services as the “Provider Manager.”<sup>746</sup>

587. In each agreement, JLI agreed to “cooperate fully with the Altria Company in its performance of the Services, including without limitation, by timely providing all information, materials, resources, decisions, and access to personnel and facilities necessary for the proper performance of the Services by the Altria Company.”<sup>747</sup>

588. In exchange, Altria Group Distribution Company agreed to distribute and sell JUUL products across the country greatly expanding JUUL’s retail footprint. While JUUL products have typically been sold in 90,000 U.S. retail outlets, Altria’s products reach 230,000 U.S. outlets. Altria Group Distribution Company also brings its logistics and distribution experience (although, after

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<sup>745</sup> *Id.* at 13.

<sup>746</sup> *See, e.g.*, JLI10490204.

<sup>747</sup> *See, e.g.*, JLI10490204.

1 increasing public scrutiny, Altria announced on January 30, 2020 that it would limit its support to  
 2 regulatory efforts beginning in March 2020<sup>748</sup>).

3 589. Specifically, AGDC agreed to:

- 4 a. Market JUUL products in 1,073 Speedway stores initially, followed by a  
 5 second wave of 1,937 stores, provide key account assistance and field sales  
 6 force management, and install Point of Sale materials for JUUL products;<sup>749</sup>
- 7 b. Sell and execute pre-books/pre-orders for JUUL products for 83 Chain accounts  
 8 and up to 51 distributors;<sup>750</sup>
- 9 c. Provide territory sales managements, key retail account assistance, and field  
 10 sales force management to perform a “full reset” (including merchandising  
 11 JUUL products to replace Nu Mark products and installing JUUL graphics and  
 12 other marketing materials) in up to 40,399 stores, including Circle K, 7-Eleven,  
 13 Chevron, Sheetz, Speedway, Wawa, Giant Eagle, Walmart, and many more;<sup>751</sup>
- 14 d. Provide sales support at 77,806 stores by improving out of stock and  
 15 distribution gaps, providing labor and Field Sales Force services to handle  
 16 merchandising, account management, tracking insights, and conduct inventory  
 17 management;<sup>752</sup>
- 18 e. Conduct supply chain management for distribution of JUUL products, as well  
 19 as line haul freight, public warehouse storage in San Bernardino, CA, last mile  
 20 freight to customers, and shipping to distributions (including Circle K, Core  
 21 Mark, and McLane) in Nevada, Arizona, and California;<sup>753</sup>
- 22 f. Provide distribution assistance, including freight from DCL to Richmond,  
 23 Virginia and warehouse storage and handling of JUUL products;<sup>754</sup>
- 24 g. Provide sales support for JUUL products including working in tens of  
 25 thousands of stores number of stores to provide insights and conduct surveys,  
 26 update and install point of sale marketing, address “inventory opportunities,”  
 27 including out of stock issues and distribution gaps, check prices and advertising  
 28 the price in the store, and selling in new initiatives at the headquarters or store

<sup>748</sup> Nathan Bomey, *Marlboro maker Altria distances itself from vaping giant JLI amid legal scrutiny*,  
 USA Today (Jan. 31, 2020), [https://www.usatoday.com/story/money/2020/01/31/juul-altria-](https://www.usatoday.com/story/money/2020/01/31/juul-altria-distances-itself-e-cigarette-maker-amid-scrutiny/4618993002/)  
[distances-itself-e-cigarette-maker-amid-scrutiny/4618993002/](https://www.usatoday.com/story/money/2020/01/31/juul-altria-distances-itself-e-cigarette-maker-amid-scrutiny/4618993002/).

<sup>749</sup> JLI10490204.

<sup>750</sup> JLI01339886.

<sup>751</sup> JLI01339886.

<sup>752</sup> JLI01339878.

<sup>753</sup> JLI01339918.

<sup>754</sup> JLI01339903.



level, including new product launches, fixture merchandising, and training store personnel, and store and ship JUUL point-of-sale materials to support JUUL sales;<sup>755</sup>

- h. Bring JLI into Altria Group Distribution Company's Retail Council in June 2019, including giving opening remarks, three breakout group sessions, and a trade show booth;<sup>756</sup> and
- i. Distribute JUUL products and provide supply chain management for distribution to Arizona, California, Hawaii, Nevada, Texas, Louisiana, and Oklahoma (including line haul freight, public warehouse storage and handling in San Bernardino, California and Fort Worth, Texas, and last mile freight to customers);<sup>757</sup>

590. Through these distribution services, Altria Group Distribution Services, and Altria Client Services (as the "Provider Manager") used the mail and wires to transmit JUUL collateral and packaging that contained the false representation that a single JUUL pod was equivalent to a pack of cigarettes. A representation which, as discussed above, Altria and Altria Client Services knew was false.

591. Altria Group Distribution Company also worked to sell Mint JUUL products in particular. For example, Altria Group Distribution Company led a "market blitz" for JUUL products starting in February 2019.<sup>758</sup> As part of this blitz effort, JLI employees recognized that "Mint growth is huge – may need double space for certain SKUs to avoid out of stock situations," but that "sales are low" for Classic Tobacco.<sup>759</sup>

592. Similarly, a March 18, 2019 AGDC presentation of its work to sell JUUL showed that it was pushing Mint more than Menthol and Virginia Tobacco combined. The re-order form for 7-Eleven

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<sup>755</sup> JLI01339937; JLI01339930; JLI01339980. The November to December 2019 agreement also included AGDC's assistance in removing the companies' "Make the Switch" campaign materials, which were the subject of a warning letter by the FDA.

<sup>756</sup> JLI01339973.

<sup>757</sup> JLI01339955.

<sup>758</sup> JLI01010641.

<sup>759</sup> JLI01010641.

1 included seven choices, four of which were for Mint JUUL pods.<sup>760</sup> In the presentation, AGDC also  
 2 indicated that Mint was flying off the shelves and that the Mint 5% 4-pack in particular was out of  
 3 stock 25% of the time.<sup>761</sup>

4 593. Crosthwaite, when he was still formally working for Altria and Altria Client Services,  
 5 was directly involved in supervising the distribution of JUUL products, including Mint. For example, a  
 6 senior director at Altria Group Distribution Company notified Crosthwaite that certain JUUL products,  
 7 including Mint 5% JUULpods, were experiencing “inventory constraints” which “may be relevant to  
 8 [Crosthwaite’s] conversation with Kevin Burns,” JLI’s then-CEO.<sup>762</sup> Crosthwaite forwarded the email  
 9 to Burns, asking him “Assume your guys are all over this?”<sup>763</sup>

10 594. AGDC’s work was effective. When listing JUUL Performance Results in March 2019,  
 11 AGDC included a quote from “Alex Cantwel, VP JUUL Strategy” reporting “We just had our largest  
 12 refill kit order in history. Thank you and your team for all the work.”<sup>764</sup>

13 595. Altria Client Services, for its part, not only served as the “provider manager” for each of  
 14 the formal agreements between JLI and various “Altria Compan[ies]”, but also agreed to work with  
 15 JLI’s regulatory affairs employees on the PMTA application for JUUL and directly market JUUL to  
 16 millions of customers.

17 596. For example, to assist with PMTA, ACS agreed to:

- 18 a. Study JUUL products, including conducting pre-clinical (chemistry,  
 19 toxicology and biological sciences), clinical, aerosol, modeling and  
 20 simulation, sensory and population research (perception, behavior,  
 21 population modeling, consumer research and post-market surveillance)  
 22 and assist with JLI’s regulatory affairs problems by providing with  
 23

24  
 25 <sup>760</sup> ALGAT0000772561.

26 <sup>761</sup> ALGAT0000772561.

27 <sup>762</sup> JLI01392499.

28 <sup>763</sup> JLI01392499.

<sup>764</sup> ALGAT0002940950.

strategy and engagement, regulatory intelligence and insight, advocacy and regulatory narrative writing and submissions;<sup>765</sup>

- b. Study and consult with JLI for examination of consumer perception, behavior, and intentions relating to JUUL products, such as whether consumers comprehend JUUL's e-vapor communications (instructions for use, labeling and safety warning) and the impact of exposure to JUUL promotional materials among users and on users on, the likelihood of switching, dual use, initiation, and cessation of tobacco products, appeal of JUUL, absolute risk perceptions associated with use of JUUL, risk perceptions relative to other tobacco products, NRTs and quitting, and general harm perceptions associated with the use of JUUL;<sup>766</sup>
- c. Study and consult with JLI on preclinical in vivo inhalation exposure of JLI's 1.7% Glacial Mint flavor product and its effect on rats;<sup>767</sup>
- d. Study and consult with JLI on chemical profiling analysis of Golden Tobacco, Virginia Tobacco, Mango, Mint, and Menthol JUUL products in 1.7, 3, and 5 nicotine strength;<sup>768</sup> and
- e. Study and consult with JLI on population modeling, including on assessing the population health impact to the U.S. population with the introduction of JUUL products, focusing on tobacco use prevalence and all-cause mortality;<sup>769</sup>
- f. Conduct JUUL topical literature reviews relating to e-vapor products, including collecting and summarizing these articles into a literature review summaries and create evidence tables on information about initiation, cessation, relapse, patterns of use, abuse liability, gateway, perceptions, chemistry, and health effects topics;<sup>770</sup>
- g. Develop, execute, and document exposure characterization for JUUL's classic tobacco product;<sup>771</sup>
- h. Study and consult with JLI on passive vaping modeling, including modeling of second and third hand exposures to e-vapor and cigarette smoke aerosols;<sup>772</sup> and
- i. Provide access to and use of Altria's product testing services, including its Smoking Machine Vitrocell 1/7, Vitrocell 24/28 system, and Vitrocell Ames 48 System.<sup>773</sup>

<sup>765</sup> JLI01339882; JLI013398976.

<sup>766</sup> JLI01426119

<sup>767</sup> JLI01426125

<sup>768</sup> JLI01426135.

<sup>769</sup> JLI01426141.

<sup>770</sup> JLI01339943.

<sup>771</sup> JLI01426146.

<sup>772</sup> JLI01426130.

<sup>773</sup> JLI01339988.

597. Altria Client Services also market JUUL products by sending out mailers, emails, and coupons to millions of people across the United States. For example, ACS agreed to:

- a. Work with JLI to develop the final creative design for direct mail campaigns, execute the plans, and mail the JUUL advertisements and coupons to 1.5 million people in March 2019, 1 million people in May 2019, 2.5 million people in September 2019, and 3.8 million people in December 2019;<sup>774</sup>
- b. Work with JLI to develop the final creative design for an email campaign and send out direct marketing via email, including three email campaigns with a combined total audience of 515,000, including coupons of JUUL;<sup>775</sup>

598. Altria also worked with JLI to cross-market JUUL and Marlboro cigarettes. As memorialized in an agreement between Philip Morris USA, Inc. and JLI, “the Altria Company” worked with JLI to design inserts to put in Altria’s cigarettes and eventually distributed coupons for JUUL starter kits in 20 million packs of L&M and Parliament brand cigarettes and 30 million packs of Marlboro cigarettes;<sup>776</sup>



<sup>774</sup> JLI01339912; JLI01339915; JLI01339967; JLI01339970. In the December 2019 agreement, but not the March, May, or September agreement, ACS claimed to “reserve the right not to send any mailing of portion thereof where all [JUUL] vapor products cannot be legally sold.” JLI01339970.

<sup>775</sup> JLI01339927.

<sup>776</sup> *Points for us!*, Reddit (Sept. 16, 2019),

[https://www.reddit.com/r/juul/comments/d50jku/points\\_for\\_us/](https://www.reddit.com/r/juul/comments/d50jku/points_for_us/) (depicting an image of a Marlboro carton with a JUUL starter kit coupon inside); JLI01339874.

599. Both the inserts distributed by Philip Morris and the mail and email advertisements sent by Altria Client Services were advertisements for JLI's fraudulent "Make the Switch" campaign described above.

600. In order to help JUUL expand and be able to keep selling to kids and lying to adults, Altria and Altria Client Services also directed JLI in combatting legal and regulatory challenges, helping with patent infringement battles and consumer health claims and helping to navigate the regulatory waters and FDA pressure. For example, in 2019, internal documents from Altria Client Services confirm that the Altria Defendants were engaged in ongoing efforts to provide "services and insight to accelerate JUUL's U.S. performance" and "actively engage FDA and other stakeholders to address youth vaping."<sup>777</sup>

601. Altria also brings lobbying muscle to the table, which worked to prevent new federal or state legislation targeting JUUL or the e-cigarette category more broadly. Altria "has a potent lobbying network in Washington [D.C.] and around the country."<sup>778</sup> Vince Willmore, a spokesman for the Campaign for Tobacco-Free Kids, which has been involved in many state lobbying battles, said, "It's hard to say where Altria ends and JLI begins."<sup>779</sup> While an Altria spokesman has denied that there was any contractual services agreement for lobbying between JLI and Altria, he admitted that he did not know what informal advice and conversations Altria has had with JLI about lobbying efforts. Crosthwaite admitted internally that Altria would be "collaborat[ing] on regulatory matters" with JLI (likely through Altria Client Services).<sup>780</sup> And Altria installed Joe Murillo, then the head of regulatory affairs for Altria and a 24-year Altria veteran with extensive experience in e-cigarette regulations, as

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<sup>777</sup> ALGAT0002856956.

<sup>778</sup> Shelia Kaplan, *In Washington, JLI Vows to Curb Youth Vaping. Its Lobbying in States Runs Counter to That Pledge.*, N.Y. Times (Apr. 28, 2019), <https://www.nytimes.com/2019/04/28/health/juul-lobbying-states-ecigarettes.html>.

<sup>779</sup> *Id.*

<sup>780</sup> ALGAT0002856953.

1 Chief Regulatory Officer for JLI. Indeed, since Altria worked with the Management Defendants to  
 2 assume some control over JLI, JLI's spending on lobbying has risen significantly. JLI spent \$4.28  
 3 million on lobbying in 2019, compared to \$1.64 million in 2018.<sup>781</sup>

4  
 5 602. Contrary to public statements, Altria's investment in JLI was not only a financial  
 6 contribution nor were these agreements about just "services"; rather, they were manifestations of  
 7 Altria's and the Management Defendants' plan to continue selling JUUL to kids and lying to adults  
 8 about JUUL products, all while staving off regulation and public outcry. Internal documents show that  
 9 Altria did not consider itself a mere non-voting minority investor or service provider. Instead, it  
 10 viewed itself as JLI's "valued partner" and wanted to ensure it could "completely unlock partnership  
 11 benefits," "guide [JLI's] strategic direction through board engagement," including "providing strategic  
 12 advice and expertise," and "collaborate on youth vaping."<sup>782</sup> According to an Altria Group Distribution  
 13 Company presentation, AGDC should be "viewed as more than a vendor but as a strategic partner in  
 14 supporting JUUL's mission."<sup>783</sup>

15  
 16 603. The Altria Defendants' services agreements with JLI obscured Altria's takeover of large  
 17 portions of JUUL's distribution and marketing. Altria's goal was always to expand the reach and sales  
 18 of JUUL products, despite the knowledge of their lies and youth targeting. According to the Altria  
 19 Client Services employees working with KC Crosthwaite on summarizing Altria Group's 2019  
 20 "Strategic Initiatives", Altria Group's CEO Howard Willard "investment thesis from the beginning"  
 21 was that Altria could accelerate JUUL growth "as it gains more prominent shelf space" and "category  
 22 management."<sup>784</sup> And importantly, as noted above, Altria gives JLI access to shelf space that it had  
 23

24  
 25 <sup>781</sup> *Client Profile: JUUL Labs*, Center for Responsive Politics, [https://www.opensecrets.org/federal-](https://www.opensecrets.org/federal-lobbying/clients/summary?cycle=2019&id=D000070920)  
 26 [lobbying/clients/summary?cycle=2019&id=D000070920](https://www.opensecrets.org/federal-lobbying/clients/summary?cycle=2019&id=D000070920) (last visited Apr. 4, 2020).

27 <sup>782</sup> ALGAT0002856956.

28 <sup>783</sup> ALGAT0000772561.

<sup>784</sup> ALGAT0002856953.

1 obtained under fraudulent pretenses. This is not just any shelf space; it is space near Altria's (Philip  
 2 Morris USA's) blockbuster Marlboro cigarettes, and other premium products and retail displays. The  
 3 arrangement allows JLI's tobacco and menthol-based products to receive prominent placement  
 4 alongside a top-rated brand of combustible cigarettes.

5 604. Altria's investment and the Altria Defendants' collaboration with the Management  
 6 Defendants was not just about investing in a legitimate business or selling to adult smokers. Instead,  
 7 Altria used its relationship with the Management Defendant and with JLI to continue selling to youth  
 8 and lying to the public, just as it had done in the past. Despite its knowledge of JUUL's youth  
 9 targeting, when announcing its investment, Altria explained that its investment in JLI "enhances future  
 10 growth prospects" and committed to applying "its logistics and distribution experience to help JLI  
 11 expand its reach and efficiency."<sup>785</sup> Altria sought to achieve this goal through "strategic guidance,"  
 12 "board influence," and marketing and distribution assistance.<sup>786</sup> And with the help of the Management  
 13 Defendants, and Pritzker and Valani in particular, the Altria Defendants have successfully ensured that  
 14 JUUL would maintain and expand its market share—a market share that, based on Altria's own  
 15 October 25, 2018 letter to the FDA, it believes was gained by employing marketing and advertising  
 16 practices that contributed to youth e-cigarette use.

17  
 18  
 19 **G. JLI, Altria, and Others Have Successfully Caused More Young People to Start Using E-**  
 20 **Cigarettes, Creating a Youth E-Cigarette Epidemic and Public Health Crisis.**

21 605. Defendants' tactics have misled the public regarding the addictiveness and safety of e-  
 22 cigarettes generally, and JUUL products specifically, resulting in an epidemic of e-cigarette use among  
 23 youth in particular.

24  
 25 <sup>785</sup> *Altria Makes \$12.8 Billion Minority Investment in JUUL to Accelerate Harm Reduction and Drive*  
 26 *Growth*, BusinessWire (Dec. 20, 2018),  
 27 [https://www.businesswire.com/news/home/20181220005318/en/Altria-12.8-Billion-Minority-](https://www.businesswire.com/news/home/20181220005318/en/Altria-12.8-Billion-Minority-Investment-JUUL-Accelerate)  
 28 [Investment-JUUL-Accelerate](https://www.businesswire.com/news/home/20181220005318/en/Altria-12.8-Billion-Minority-Investment-JUUL-Accelerate).

<sup>786</sup> ALGAT0004641801.



606. Defendants’ advertising and third-party strategy, as discussed above, ensured that everyone from adults to young children, would believe JUULing was a cool, fun, and safe activity.

607. To this day, JLI has not fully disclosed the health risks associated with its products, has not recalled or modified its products despite the known risks, and continues to foster a public health crisis, placing millions of people in harm’s way.

**1. Defendants’ Scheme Caused Users, Including Minors, to be Misled into Believing that JUUL was Safe and Healthy.**

608. In 2016, the National Institute on Drug Abuse issued findings regarding “Teens and Cigarettes,” reporting that 66% of teens believed that e-cigarettes contained only flavoring, rather than nicotine.<sup>787</sup>

609. Two years later, despite the ongoing efforts of public health advocates, a 2018 study of JUUL users between the ages of fifteen and twenty-four revealed that 63% remained unaware that JUUL products contain nicotine.<sup>788</sup> Further, the study found that respondents using e-cigarettes were less likely to report that e-cigarettes were harmful to their health, that people can get addicted to e-cigarettes, or that smoke from others’ e-cigarettes was harmful.<sup>789</sup>

610. Similarly, in 2018, a literature review of seventy-two articles published in the International Journal of Environmental Research and Public Health found that e-cigarettes were perceived by adults and youth as being healthier, safer, less addictive, safer for one’s social environment, and safer to use during pregnancy than combustible cigarettes.<sup>790</sup> Further, researchers found that specific flavors (including dessert and fruit flavors) were perceived to be less harmful than

<sup>787</sup> *Teens and E-cigarettes*, Nat’l Inst. on Drug Abuse, <https://www.drugabuse.gov/related-topics/trends-statistics/infographics/teens-e-cigarettes> (last visited Apr. 4, 2020).

<sup>788</sup> Jeffrey G. Willett et al. *Recognition, Use and Perceptions of Juul Among Youth and Young Adults*, 28 Tobacco Control 054273 (2019).

<sup>789</sup> *Id.*

<sup>790</sup> *Id.*

1 tobacco flavors among adult and youth e-cigarette users.<sup>791</sup> In addition, researchers found that youth e-  
 2 cigarette users perceived e-cigarettes as safe to use and fashionable.<sup>792</sup>

3 611. In 2019, a study published in Pediatrics found that 40% of participants reported using  
 4 nicotine-free e-cigarette products, when in fact the products they were using contained significant  
 5 levels of nicotine.<sup>793</sup>

6 612. In 2019, a study published in the British Medical Journal Open systematically reviewed  
 7 all peer-reviewed scientific literature published on e-cigarette perceptions through March 2018 which  
 8 included fifty-one articles.<sup>794</sup> Researchers found consistent evidence showing that flavors attract both  
 9 youth and young adults to use e-cigarettes.<sup>795</sup> In addition, among this same group, fruit and dessert  
 10 flavors decrease the perception that e-cigarettes are harmful, while increasing the willingness to try e-  
 11 cigarettes.<sup>796</sup>

## 12 **2. Use of JUUL by Minors Has Skyrocketed**

13 613. On December 28, 2018, the University of Michigan's National Adolescent Drug Trends  
 14 for 2018 reported that increases in adolescent e-cigarette use from 2017 to 2018 were the "largest ever  
 15 recorded in the past 43 years for any adolescent substance use outcome in the U.S."<sup>797</sup>

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21 <sup>791</sup> Kim A. G. J. Romijnders et al., *Perceptions and Reasons Regarding E-Cigarette Use Among Users*  
 22 *and Non-Users: A Narrative Literature Review*, 15 Int'l J. of Env'tl. Research & Public Health 1190  
 (2018), [https://doi: 10.3390/ijerph15061190](https://doi.org/10.3390/ijerph15061190).

23 <sup>792</sup> *Id.*

24 <sup>793</sup> Rachel Boykan et al., *Self-Reported Use of Tobacco, E-Cigarettes, and Marijuana versus Urinary*  
 25 *Biomarkers*, 143 Pediatrics (2019), <https://doi.org/10.1542/peds.2018-3531>.

26 <sup>794</sup> Meernik, et al, *Impact of Non-Menthol Flavours in E-Cigarettes on Perceptions and Use: An*  
 27 *Updated Systematic Review*, BMJ Open, 9:e031598 (2019),  
 28 <https://bmjopen.bmj.com/content/9/10/e031598>.

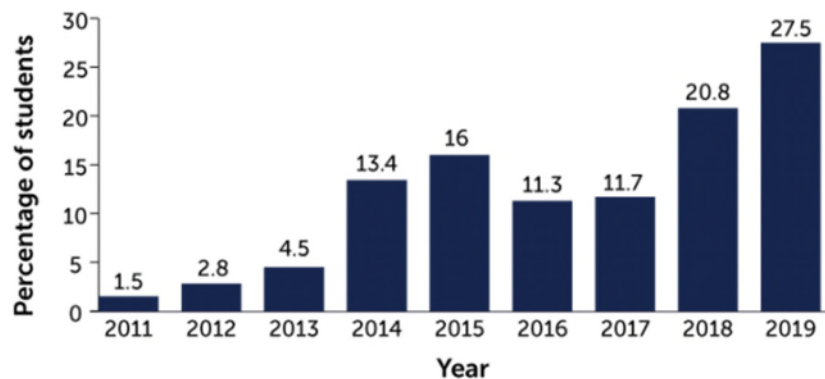
<sup>795</sup> *Id.*

<sup>796</sup> *Id.*

<sup>797</sup> *National Adolescent Drug Trends in 2018*, Univ. of Mich. Inst. for Social Research (Dec. 17, 2018),  
<http://monitoringthefuture.org/pressreleases/18drugpr.pdf>.

614. The percentage of 12th grade students who reported consuming nicotine almost doubled between 2017 and 2018, rising from 11% to 20.9%.<sup>798</sup> This increase was “twice as large as the previous record for largest-ever increase among past 30-day outcomes in 12th grade.”

615. By 2018 approximately 3.6 million middle and high school students were consuming e-cigarettes regularly,<sup>799</sup> and one in five 12th graders reported used an e-cigarette containing nicotine in the last 30 days.<sup>800</sup> As of late 2019, 5 million students reported active use of e-cigarettes, with 27.5% of high school students and 10.5% of middle school students using them within the last thirty days and with most youth reporting JUUL as their usual brand.<sup>801</sup>



616. The Secretary of the U.S. Department of Health and Human Services declared that “[w]e have never seen use of any substance by America’s young people rise as rapidly as e-cigarette use [is rising].”<sup>802</sup> Then FDA Commissioner Dr. Gottlieb described the increase in e-cigarette

<sup>798</sup> News Release, *Teens Using Vaping Devices in Record Numbers*, Nat’l Insts. of Health (Dec. 17, 2018) <https://www.nih.gov/news-events/news-releases/teens-using-vaping-devices-record-numbers>.

<sup>799</sup> See Jan Hoffman, *Addicted to Vaped Nicotine, Teenagers Have no Clear Path to Quitting*, N.Y. Times (Dec. 18, 2018), <https://www.nytimes.com/2018/12/18/health/vaping-nicotine-teenagers.html>.

<sup>800</sup> *Id.*

<sup>801</sup> National Youth Tobacco Survey, U.S. FDA (2019), <https://www.fda.gov/tobacco-products/youth-and-tobacco/youth-tobacco-use-results-national-youth-tobacco-survey>; Karen Cullen et al., *e-Cigarette Use Among Youth in the United States*, 322 JAMA 2095 (2019).

<sup>802</sup> Jan Hoffman, *Study Shows Big Rise in Teen Vaping This Year*, N.Y. Times (Dec. 17, 2018), <https://www.nytimes.com/2018/12/17/health/ecigarettes-teens-nicotine.html>; Rajiv Bahl, *Teen Use of Flavored Tobacco was Down, But E-Cigarettes Are Bringing It Back Up*, Healthline (Jan. 9,

consumption as an “almost ubiquitous—and dangerous—trend” that is responsible for an “epidemic” of nicotine use among teenagers.<sup>803</sup> The rapid—indeed infectious—adoption of e-cigarettes “reverse[s] years of favorable trends in our nation’s fight to prevent youth addiction to tobacco products.”<sup>804</sup> CDC Director Robert Redfield agreed, “The skyrocketing growth of young people’s e-cigarette use over the past year threatens to erase progress made in reducing tobacco use. It’s putting a new generation at risk for nicotine addiction.”<sup>805</sup> Then-Commissioner Gottlieb identified the two primary forces driving the epidemic as “youth appeal and youth access to flavored tobacco products.”<sup>806</sup>

617. Within days of the FDA’s declaration of an epidemic, Surgeon General Dr. Jerome Adams also warned that the “epidemic of youth e-cigarette use” could condemn a generation to “a lifetime of nicotine addiction and associated health risks.”<sup>807</sup> The Surgeon General’s 2018 Advisory states that JUUL, with its combination of non-irritating vapor and potent nicotine hit, “is of particular concern for young people, because it could make it easier for them to initiate the use of nicotine . . . and also could make it easier to progress to regular e-cigarette use and nicotine dependence.”<sup>808</sup>

618. Kids are consuming so much nicotine that they are experiencing symptoms of nicotine toxicity, including headaches, nausea, sweating, and dizziness, and they have even coined a term for it:

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2019), <https://www.healthline.com/health-news/flavored-tobacco-use-rising-again-among-teens#An-unhealthy-habit>.

<sup>803</sup> News Release, *FDA Launches New, Comprehensive Campaign to Warn Kids About the Dangers of E-Cigarette Use as Part of Agency’s Youth Tobacco Prevention Plan, Amid Evidence of Sharply Rising Use Among Kids*, U.S. FDA (Sept. 18, 2018), <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm620788.htm>.

<sup>804</sup> *Id.*

<sup>805</sup> Amir Vera, *Texas Governor Signs Law Increasing the Age to Buy Tobacco Products to 21*, CNN (June 8, 2019), <https://www-m.cnn.com/2019/06/08/health/texas-new-tobacco-law/index.html>.

<sup>806</sup> *Id.*

<sup>807</sup> Surgeon General’s Advisory on E-cigarette Use Among Youth (2018), <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>.

<sup>808</sup> *Id.* a 2.

“nic sick.” As one high school student explained to *CBS News*, it “kinda seems like a really bad flu, like, just out of nowhere. Your face goes pale, you start throwing up and stuff, and you just feel horrible.”<sup>809</sup>

619. The JUUL youth addiction epidemic spread rapidly across high schools in the United States. JUUL surged in popularity, largely through social media networks, and created patterns of youth usage, illegal youth transactions, and addiction, that are consistent with this account from Reddit in 2017:

Between classes the big bathroom in my school averages 20-25 kids, and 5-10 JUULs. Kids usually will give you a dollar for a JUUL rip if you don’t know them, if you want to buy a pod for 5\$ you just head into the bathroom after lunch. We call the kids in there between every class begging for rips ‘JUUL fiends.’ Pod boys are the freshman that say ‘can I put my pod in ur juul?’ and are in there every block. I myself spent about 180\$ on mango pods and bought out a store, and sold these pods for 10\$ a pod, making myself an absolutely massive profit in literally 9 days. Given because I’m 18 with a car and that’s the tobacco age around here, I always get offers to get pod runs or juuls for kids. people even understand the best system to get a head rush in your 2 minutes between classes, is all the juuls at once. So someone yells “GIVE ME ALL THE JUULS” and 3-7 are passed around, two hits each. This saves us all juice, and gives you a massive head rush. Kids also scratch logos and words onto their juuls to make i[t] their own, every day you can find the pod covers in my student parking lot. I know this sounds exaggerated, but with a school with 1400 kids near the city and JUULs being perceived as popular, it’s truly fascinating what can happen.<sup>810</sup>

620. In response to the post above, several others reported similar experiences:

- a. “[T]his is the exact same thing that happens at my school, we call [JUUL fiends] the same thing, kind of scary how similar it is.”<sup>811</sup>
- b. “Same thing at my school. JUUL fiend is a term too.”<sup>812</sup>

<sup>809</sup> *High school students say about 20% of their peers are vaping, some as young as 8th grade*, CBS News (Aug. 30, 2019), <https://www.cbsnews.com/news/high-school-students-say-about-20-of-their-peers-are-vaping-some-as-young-as-8th-grade/>.

<sup>810</sup> *What’s Juul in School*, [https://www.reddit.com/r/juul/comments/61is7i/whats\\_juul\\_in\\_school/](https://www.reddit.com/r/juul/comments/61is7i/whats_juul_in_school/) (last visited Apr. 4, 2020).

<sup>811</sup> *Id.*

<sup>812</sup> *Id.*

- c. “Yeah nicotine addiction has become a huge problem in my high school because of juuls even the teachers know what they are.”<sup>813</sup>
- d. “[S]ame [expletive] at my school except more secretive because it’s a private school. It’s crazy. Kids hit in class, we hit 3-5 at once, and everyone calls each other a juul fiend or just a fiend. Funny how similar it all is.”<sup>814</sup>
- e. “[T]he same [expletive] is happening in my school. kids that vaped were called [expletive] for the longest time, that all changed now.”<sup>815</sup>
- f. “Made an account to say that it’s exactly the same way in my school! LOL. I’m from California and I think I know over 40 kids that have it here just in my school. We do it in the bathrooms, at lunch etc. LMAO. ‘Do you have a pod man?’”<sup>816</sup>
- g. “It’s the same at my school and just about every other school in Colorado.”<sup>817</sup>
- h. “2 months into this school year, my high school made a newspaper article about the ‘JUUL epidemic.’”<sup>818</sup>
- i. “Wow do you go to high school in Kansas because this sounds EXACTLY like my school. I’ll go into a different bathroom 4 times a day and there will be kids in there ripping JUUL’s in every single one.”<sup>819</sup>
- j. “At my high school towards the end of lunch everyone goes to the bathroom for what we call a ‘juul party.’ People bring juuls, phixes, etc. It’s actually a great bonding experience because freshman can actually relate to some upperclassmen and talk about vaping.”<sup>820</sup>
- k. “To everyone thinking that this is just in certain states, it’s not. This is a nationwide trend right now. I’ve seen it myself. If you have one you’re instantly insanely popular. Everyone from the high-achievers to the kids who use to say ‘e-cigs are for [expletives]’ are using the juul. It’s a craze. I love it, I’ve made an insane amount of money. It’s something that has

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<sup>813</sup> *Id.*

<sup>814</sup> *Id.*

<sup>815</sup> *Id.*

<sup>816</sup> *Id.*

<sup>817</sup> *Id.*

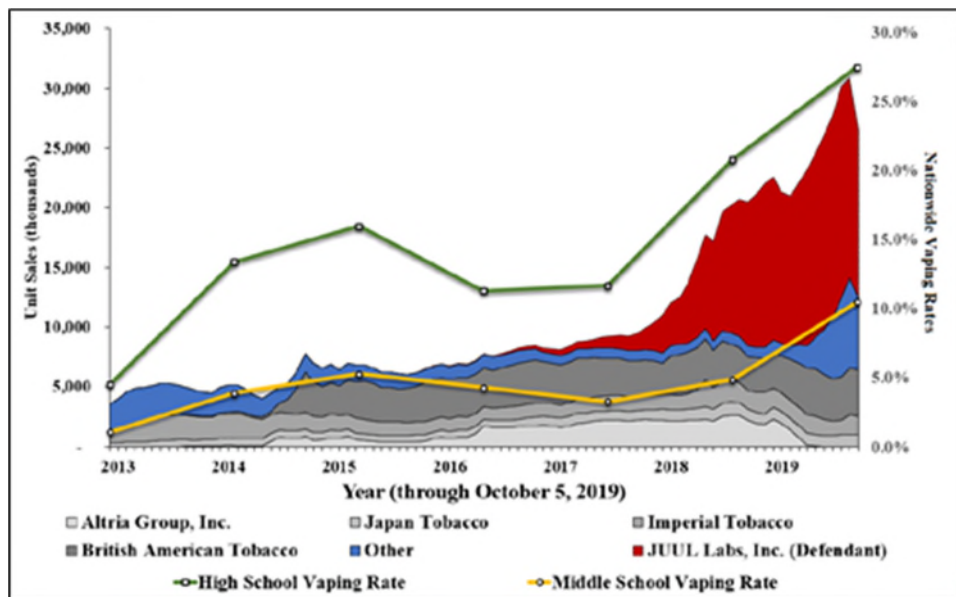
<sup>818</sup> *Id.* (citing *Juuls Now Rule the School as Students Frenzy Over E-cig* (Oct. 5, 2016), <https://imgur.com/a/BKewp>).

<sup>819</sup> *Id.*

<sup>820</sup> *Id.*

swept through our age group and has truly taken over. And it happened almost overnight.”<sup>821</sup>

621. The following graph illustrates JLI’s responsibility for the nationwide youth e-cigarette epidemic. While the rest of the e-cigarette industry stagnated from 2017 through 2018, JLI experienced meteoric growth. Through that same timeframe, youth e-cigarette rates nearly doubled from more than 11% in 2017 to more than 20% in 2018. Through October 5, 2019 (the last date for which data was available), rates of youth e-cigarette use continued to increase, tracking the growth of JUUL.



622. The unique features of the JUUL e-cigarette—high nicotine delivery, low harshness, and easy-to-conceal design—have caused patterns of addiction with no historical precedent. It is not uncommon for fifteen-year-old students, even those who live at home with their parents, to consume two or more JUUL pods a day.

<sup>821</sup> *Id.* (emphasis added).

<sup>822</sup> The area graph depicts e-cigarette unit sale volumes in retail outlets tracked by Nielsen by manufacturer and month from 2013 through October 5, 2019; the line graph depicts national high school and middle school e-cigarette past-30-day usage rates as percentages from 2013 through 2019, with each data point representing a year. *See* Nielsen: Tobacco All Channel Data; National Youth Tobacco Survey (2019), <https://www.fda.gov/tobacco-products/youth-and-tobacco/youth-tobacco-use-results-national-youth-tobacco-survey>; *see also* Compl. at 2 (Figure 1), *Commonwealth of Penn. v. Juul Labs, Inc.*, (Ct. Common Pleas, Feb. 10, 2020).



623. The downwards trend in youth smoking that public health departments and school anti-tobacco programs worked so hard to create has completely reversed. In 2018, more than one in four high school students in the United States reported using a tobacco product in the past thirty days, a dramatic increase from just one year before.<sup>823</sup> But there was no increase in the use of cigarettes, cigars, or hookahs during that same time period.<sup>824</sup> There was only increased use in a single tobacco product: e-cigarettes. While use of all other tobacco products continued to decrease as it had been for decades, e-cigarette use increased 78% in just one year.<sup>825</sup> This drastic reversal caused the CDC to describe youth e-cigarette use as an “epidemic.”<sup>826</sup>

## **H. JLI Thrived Due to Extensive Efforts to Delay Meaningful Regulation of its Products**

### **1. E-Cigarette Manufacturers Successfully Blocked the Types of Regulations that Reduced Cigarette Sales, Creating the Perfect Opportunity for JLI.**

624. One of the main reasons e-cigarettes like JUUL were so appealing from an investment and business development perspective is that, unlike combustible cigarettes, e-cigarettes were relatively unregulated. This regulatory void was not an accident; the cigarette industry, and then the e-cigarette industry, spent significant resources blocking, frustrating, and delaying government action. A 1996 article in the *Yale Law & Policy Review* detailed how cigarette companies vehemently opposed

<sup>823</sup> *Progress Erased: Youth Tobacco Use Increased During 2017-2018*, CDC (Feb. 11, 2019), <https://www.cdc.gov/media/releases/2019/p0211-youth-tobacco-use-increased.html>.

<sup>824</sup> *Tobacco Use By Youth Is Rising: E-Cigarettes are the Main Reason*, CDC (Feb. 2019), <https://www.cdc.gov/vitalsigns/youth-tobacco-use/index.html>.

<sup>825</sup> Scott Gottlieb, Statement from FDA Commissioner Scott Gottlieb, M.D., on proposed new steps to protect youth by preventing access to flavored tobacco products and banning menthol in cigarettes, FDA (Nov. 15, 2018), <https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-proposed-new-steps-protect-youth-preventing-access>.

<sup>826</sup> Jerome Adams, *Surgeon General’s Advisory on E-cigarette Use Among Youth*, CDC (Dec. 2018), <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>.

1 the FDA mid-1990s rules on tobacco products, using lawsuits, notice-and-comment, and arguments  
 2 related to the FDA’s jurisdiction to delay or undo any regulatory efforts.<sup>827</sup>

3 625. In 2009, Congress enacted the Family Smoking Prevention and Tobacco Control Act  
 4 (“TCA”). The TCA amended the Federal Food, Drug, and Cosmetic Act to allow the FDA to regulate  
 5 tobacco products.

6 626. Although the TCA granted the FDA immediate authority to regulate combustible  
 7 cigarettes, it did not give the FDA explicit authority over all types of tobacco products—including  
 8 those that had not yet been invented or were not yet popular. To “deem” a product for regulation, the  
 9 FDA must issue a “deeming rule” that specifically designates a tobacco product, such as e-cigarettes,  
 10 as falling within the purview of the FDA’s authority under the TCA.

11 627. The TCA also mandated that all “new” tobacco products (i.e., any product not on the  
 12 market as of February 15, 2007) undergo a premarket authorization process before they could be sold  
 13 in the United States.

14 628. Four years later, on April 25, 2014, the FDA finally issued a proposed rule deeming e-  
 15 cigarettes for regulation under the Tobacco Act (“2014 Proposed Rule”).

16 629. Once issued, the e-cigarette industry, together with its newfound allies, parent  
 17 companies, and investors—the cigarette industry and pro-e-cigarette lobbyists—set to work to dilute  
 18 the rule’s effectiveness. For example, in comments to the 2014 Proposed Rule, companies such as  
 19 Johnson Creek Enterprises (one of the first e-liquid manufacturers) stated that the “FDA [] blatantly  
 20 ignored evidence that our products improve people’s lives.”<sup>828</sup>

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 23  
 24  
 25 <sup>827</sup> Melvin Davis, *Developments in Policy: The FDA's Tobacco Regulations*, 15 Yale L. & Policy Rev.  
 26 399 (1996).

27 <sup>828</sup> Eric Lipton, *A Lobbyist Wrote the Bill. Will the Tobacco Industry Win Its E-Cigarette Fight?*, N.Y.  
 28 Times (Sept. 2, 2016), <https://www.nytimes.com/2016/09/03/us/politics/e-cigarettes-vaping-cigars-fda-altria.html>.

630. The New York Times reported that Altria was leading the effort to dilute, diminish, or remove e-cigarette regulations. Notwithstanding Altria's professed concern about flavors attracting youth customers, Altria submitted comments in August 2014 in response to the proposed rule opposing the regulation of flavors. Altria asserted that restrictions could result in more illicit sales, and that adults also liked fruity and sweet e-cigarette flavors.<sup>829</sup>

631. In 2015, Altria lobbied Capitol Hill with its own draft legislation to eliminate the new requirement that most e-cigarettes already on sale in the United States be evaluated retroactively to determine if they are "appropriate for the protection of public health." In effect, Altria lobbied to "grandfather" all existing e-cigarette brands, including JUUL, into a lax regulatory regime. That proposed legislation was endorsed by R.J. Reynolds. Altria delivered its proposal, entitled "F.D.A. Deeming Clarification Act of 2015," to Representative Tom Cole of Oklahoma, who introduced the bill two weeks later using Altria's draft verbatim.<sup>830</sup> Seventy other representatives signed on to Altria's legislation.<sup>831</sup>

632. The e-cigarette industry, along with the intertwined cigarette industry, was able to leverage support among Members of Congress such as Representative Cole and Representative Sanford Bishop of Georgia, who advocated for cigarette industry interests and opposed retroactive evaluation of e-cigarette products. Both Cole and Bishop echoed a common cigarette and e-cigarette industry refrain, that any regulations proposed by the FDA would bankrupt small businesses, even

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<sup>829</sup> Altria Client Services Inc., Comment Letter on Proposed Rule Deeming Tobacco Products to be Subject to the Federal Food, Drug, and Cosmetic Act 47-48 (Aug. 8, 2014), <https://www.altria.com/-/media/Project/Altria/Altria/about-altria/federal-regulation-of-tobacco/regulatory-filings/documents/ALCS-NuMark-Comments-FDA-2014-N-0189.pdf>.

<sup>830</sup> Eric Lipton, *A Lobbyist Wrote the Bill. Will the Tobacco Industry Win Its E-Cigarette Fight?*, N.Y. Times (Sept. 2, 2016), <https://www.nytimes.com/2016/09/03/us/politics/e-cigarettes-vaping-cigars-fda-altria.html>.

<sup>831</sup> *Id.*

1 though the overwhelming majority of e-cigarettes were manufactured and distributed by large cigarette  
2 companies.

3 633. Representatives Cole and Bishop received some of the largest cigarette industry  
4 contributions of any member of the U.S. House of Representatives, with Representative Bishop  
5 receiving \$13,000 from Altria, and Representative Cole \$10,000 from Altria in the 2015-2016 cycle.<sup>832</sup>  
6

7 634. By thwarting and delaying regulation, or by ensuring what regulation did pass was laced  
8 with industry-friendly components, the e-cigarette industry, including Defendants, hobbled the FDA—  
9 and by extension—Congress’s efforts to regulate e-cigarettes. Simultaneously, the e-cigarette industry  
10 continued to market their products to youth, and it coordinated to sow doubt and confusion about the  
11 addictiveness and health impacts of e-cigarettes.

12 635. Even after the FDA issued its final deeming rule in 2016, e-cigarette industry lobbying  
13 continued to pay dividends to companies like JLI. In 2017, when Dr. Scott Gottlieb took over as the  
14 FDA Commissioner, one of his first major acts was to grant e-cigarette companies a four-year  
15 extension to comply with the deeming rule, even as data indicated sharp increases in teen e-cigarette  
16 use.<sup>833</sup> Gottlieb had previously served on the board of Kure, a chain of e-cigarette lounges in the  
17 United States, though he fully divested before taking the helm at the FDA.<sup>834</sup>  
18

19 636. The four-year extension was celebrated by e-cigarette lobbyists. Greg Conley, president  
20 of the American Vaping Association (“AVA”), stated that but for the extension, “over 99 percent of  
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24 <sup>832</sup> *Id.*; *Rep. Tom Cole - Oklahoma District 04, Contributors 2015-16*, OpenSecrets (2017),  
25 <https://www.opensecrets.org/members-of-congress/contributors?cid=N00025726&cycle=2016>.

26 <sup>833</sup> Katie Thomas & Sheila Kaplan, *E-Cigarettes Went Unchecked in 10 Years of Federal Inaction*,  
27 N.Y. Times (Oct. 14, 2019), <https://www.nytimes.com/2019/10/14/health/vaping-e-cigarettes-fda.html>.

28 <sup>834</sup> Zeke Faux et al., *Vaping Venture Poses Potential Conflict for Trump’s FDA Nominee*, Bloomberg,  
(Apr. 19, 2017), <https://www.bloomberg.com/news/articles/2017-04-19/vaping-venture-poses-potential-conflict-for-trump-s-fda-nominee>.

vaper products available on the market today would be banned next year.”<sup>835</sup> Despite the minimal research publicly available on the health effect of e-cigarettes, Ray Story, who had since become commissioner of the Tobacco Vapor Electronic Cigarette Association, lauded the decision: “Absolutely, it’s a good thing . . . [w]hen you look at harm reduction, it’s a no brainer.”<sup>836</sup>

**2. JLI, the Management Defendants, and Altria Defendants Successfully Shielded the Popular Mint Flavor from Regulation.**

637. JLI, the Management Defendants, and Altria Defendants had a two-fold plan for staving off regulation: (1) ensure the FDA allowed certain flavors, namely mint, to remain on the market; and (2) stave off a total prohibition on JUUL that was being contemplated in light of JLI’s role in the youth e-cigarette epidemic. These schemes involved acts of mail and wire fraud, with the intent to deceive the FDA, Congress, and the public at large.

638. First, JLI, the Management Defendants, and Altria publicly defended mint flavoring as a substitute for menthol cigarette smokers, when in fact JLI’s studies indicated that mint users are not former menthol smokers. Second, by fighting to keep mint as the last flavor on the market, the cigarette industry could continue to appeal to non-smokers, including youth. JLI and the Management Defendants coordinated with Altria to pursue a fraudulent scheme to convince the FDA into leaving the mint flavor on the market, sacrificing other flavors in the process.

639. On August 2, 2018, JLI met with the FDA to discuss a proposed youth-behavioral study regarding the prevalence of use, perceptions of use, and intentions to use JUUL and other tobacco products among adolescents aged 13-17 years (the “Youth Prevalence Study”).<sup>837</sup>

<sup>835</sup> Sheila Kaplan, *F.D.A. Delays Rules That Would Have Limited E-Cigarettes on Market*, N.Y. Times (July 28, 2017), <https://www.nytimes.com/2017/07/28/health/electronic-cigarette-tobacco-nicotine-fda.html>.

<sup>836</sup> *Id.*

<sup>837</sup> Letter from Joanna Engelke, JUUL Labs, Inc., to David Portnoy, Ph.D., M.P.H., FDA Center for Tobacco Products (Nov. 5, 2018).

1           640. On November 5, 2018, JLI transmitted the results of the Youth Prevalence Study to the  
2 FDA and reported that a study of over 1,000 youth had found that only 1.5% of youth had ever used a  
3 JUUL, and that only 0.8% of youth had used a JUUL in the last 30 days. And in stark contrast to the  
4 McKinsey and DB Research studies discussed above, the Youth Prevalence Study suggested that  
5 mango was four times as popular as mint.<sup>838</sup> Specifically, the study found that 47% of youth who  
6 reported use of a JUUL device in the last 30-days professed to using mango most often, with only  
7 about 12% reporting the same for mint.  
8

9           641. JLI's study was a sham. JLI, the Management Defendants, and Altria knew their  
10 reported data was inconsistent with the McKinsey and DB Research studies conducted just a few  
11 months earlier. JLI's report featured responses to a carefully selected survey question—which *single*  
12 flavor youth used most often?—that obscured the widespread use of mint JUUL pods among youth.  
13

14           642. Ironically, just a few days after JLI submitted the misleading Youth Prevalence Study to  
15 the FDA, the National Youth Tobacco Survey was released. Revealing the depths of the deception of  
16 JLI's Youth Prevalence Study, which found that only 1.5% of youth were current users of e-cigarettes,  
17 the National Youth Tobacco Survey found that 20.8% of high school student were current users (*i.e.*,  
18 consumed e-cigarettes within the last 30 days).  
19

20           643. The Youth Prevalence Study that JLI submitted to the FDA, either via U.S. mail or by  
21 electronic transmission, was false and misleading. JLI, the Management Defendants, and Altria knew  
22 as much. Indeed, they counted on it.  
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28 <sup>838</sup> *Id.* at 3.

644. As the e-cigarette crisis grew, on September 25, 2018, then-FDA Commissioner Scott Gottlieb sent letters to Altria, JLI and other e-cigarette manufacturers, requesting a “detailed plan, including specific timeframes, to address and mitigate widespread use by minors.”<sup>839</sup>

645. As evidenced by Altria’s recent admission that negotiations with JLI were ongoing in late 2017,<sup>840</sup> Altria and JLI’s responses to the FDA reflect a coordinated effort to mislead the FDA with the intention that regulators, in reliance on their statements, allow JLI to continue marketing mint JUUL pods.<sup>841</sup>

646. Defendants’ plan centered on efforts to deceive the FDA that (1) mint was more akin to Tobacco and Menthol than other flavors; and (2) kids did not prefer mint.

647. JLI took the first step in this coordinated effort to deceive the FDA. In response to then-Commissioner Gottlieb’s September 12, 2018 letter, JLI prepared an “Action Plan,” which it presented to the FDA at an October 16, 2018 meeting, and presented to the public on November 12, 2018. The substance of JLI’s presentation to the FDA and its public-facing Action Plan were largely identical.<sup>842</sup> JLI purported to “share a common goal- preventing youth from initiating on nicotine.”<sup>843</sup> As part of this plan, JLI stated that it would be “stopping flavored JUUL pod sales to all 90,000+ retail stores.”

648. But this statement was not true. JLI was continuing retail sales of its mint JUUL pods, which JLI categorized as a non-flavored “tobacco and menthol product.”<sup>844</sup> In JLI’s Action Plan, then-CEO Burns stated that only products that “mirror what is currently available for combustible

<sup>839</sup> Letter from Scott Gottlieb, M.D. to JUUL Labs, Inc. (Sept. 12, 2018); Letter from Scott Gottlieb, M.D. to Altria Group Inc. (Sept. 12, 2018).

<sup>840</sup> Letter from Howard Willard III, Altria to Senator Durbin, et. al. (Oct. 14, 2019).

<sup>841</sup> See *United States v. Jones*, 712 F.2d 1316, 1320-21 (9th Cir. 1983) (“It is enough that the mails be used as part of a ‘lulling’ scheme by reassuring the victim that all is well and discouraging him from investigating and uncovering the fraud.”).

<sup>842</sup> JUUL did not include in its Action Plan a proposal for Bluetooth or Wi-Fi equipped devices that was included in JLI’s October presentation.

<sup>843</sup> JUUL Labs, Inc. *FDA Presentation*, 2 (Oct. 16, 2018); INREJUUL\_00182989.

<sup>844</sup> *Id.*



cigarettes—tobacco and menthol-based products (menthol and mint pods)—will be sold to retail stores.”<sup>845</sup>

649. In both JLI’s October 2018 presentation to the FDA and JLI’s Action Plan that was shared with the public, JLI and its CEO fraudulently characterized mint as a non-flavored cigarette product, akin to tobacco and menthol cigarettes, suggesting that it was a product for adult smokers. The image below was included in both the public-facing Action Plan and JLI’s presentation to the FDA.



650. JLI knew that non-smoking youth liked mint as much as any flavor.

651. Numerous internal studies had informed JLI that mint’s success was “not because it’s a menthol/a familiar tobacco flavor but because it is the best JUUL flavor profile on multiple levels.”<sup>846</sup> Indeed, despite JLI’s attempts to explicitly link mint to menthol, JLI knew there was “No Implied

<sup>845</sup> *JUUL Labs Action Plan*, JUUL Labs, Inc. (Nov. 13, 2018), <https://newsroom.juul.com/juul-labs-action-plan/>.

<sup>846</sup> INREJUUL\_00265069.

Relationship Between Mint & Menthol,”<sup>847</sup> and “menthol smokers are not the only driver behind the popularity of mint flavored JUUL pods.”<sup>848</sup>

652. Most importantly, JLI knew that mint was the most popular JUUL pod. Though other flavors might draw new customers, JLI’s most addictive “flavor” predictably became its most popular.

653. The characterization of mint as an adult tobacco product was also fraudulent because JLI *knew first hand* from the McKinsey and DB Research studies that teens viewed mint as favorably as mango, which implies that mango and mint were fungible goods for JLI’s underage users. The McKinsey and DB Research studies also showed that youth preferred mint over the more stereotypically youth-oriented flavors like fruit medley, crème brule, and cucumber. As alleged in a Whistleblower Complaint, JLI’s then-CEO told his employees: “You need to have an IQ of 5 to know that when customers don’t find mango they buy mint.”<sup>849</sup>

654. On October 25, 2018, less than ten days after JLI presented its fraudulent, misleading Action Plan to the FDA, Altria’s CEO Howard Willard submitted a letter in response to the FDA’s call to combat the youth epidemic. Willard’s letter was a clear indication of Altria’s willingness to continue the fraudulent scheme and deception of the FDA. While Willard’s letter confirmed that Altria understood that JLI’s conduct and product was addicting many children to nicotine, this letter repeated the misleading statement that mint was a “traditional tobacco flavor” despite Altria and JLI knowing it was no such thing. Willard then claimed that the youth epidemic was caused, in part, by “flavors that go beyond traditional tobacco flavors”—which, according to JLI and Altria, did not include mint—and announced that Altria would discontinue all MarkTen flavors except for “traditional tobacco, menthol

<sup>847</sup> INREJUUL\_00079307-INREJUUL\_00079409, at 395.

<sup>848</sup> *Id.*

<sup>849</sup> Angelica LaVito, *Former JLI executive sues over retaliation, claims company knowingly sold tainted nicotine pods*, CNBC (Oct. 30, 2019), <https://www.cnbc.com/2019/10/30/former-juul-executive-sues-over-retaliation-claims-company-knowingly-sold-tainted-pods.html>.

1 and mint flavors.” Willard asserted that these three flavors were essential for transitioning smokers.  
 2 But Willard, and Altria, knew this was not true.<sup>850</sup>

3 655. That same day—October 25, 2018—Altria continued its deception on an earnings call  
 4 with investors. Altria fraudulently described its decision to remove its pod-based products from the  
 5 market as one intended to address the dramatic increase in youth e-cigarette use, while it was only  
 6 weeks away from publicly announcing its 35% stake in JLI:  
 7

8 We recently met with Commissioner Gottlieb to discuss steps that could be taken to  
 9 address underage access and use. Consistent with our discussion with the FDA and  
 10 because we believe in the long-term promise of e-vapor products and harm reduction,  
 11 we’re taking immediate action to address this complex situation.

12 First, Nu Mark will remove from the market MarkTen Elite and Apex by MarkTen pod-  
 13 based products until these products receive a market order from the FDA or the youth  
 14 issue is otherwise addressed. Second, for our remaining MarkTen and Green Smoke cig-  
 15 a-like products, Nu Mark will sell only tobacco, menthol and mint varieties. Nu Mark  
 16 will discontinue the sale of all other flavor variants of our cig-a-like products until these  
 17 products receive a market order from the FDA or the youth issue is otherwise addressed.  
 18 Although we don’t believe we have a current issue with youth access or use of our e-vapor  
 19 products, we are taking this action, because we don’t want to risk contributing to the issue.

20 After removing Nu Mark’s pod-based products and cig-a-like flavor variants,  
 21 approximately 80% of Nu Mark’s e-vapor volume in the third quarter of 2018 will remain  
 22 on the market.<sup>851</sup>

23 656. Willard reiterated that “pod-based products and flavored products” were behind the  
 24 increase in youth use of e-cigarettes:  
 25

26 I mean, I think the way we thought about this was that we believe e-vapor has a lot of  
 27 opportunity to convert adult cigarette smokers in the short, medium and long-term, but  
 28 clearly, this significant increase in youth usage of the products puts that at risk and we  
 think rapid and significant action is necessary. And I think as we looked at the data that  
 is available in some of the remarks from the FDA, I think we concluded that the driver of  
 the recent increase we think is pod-based products and flavored products and so we

<sup>850</sup> Letter from Howard Willard III, Altria to Senator Durbin, et. al. (Oct. 14, 2019).

<sup>851</sup> Altria Group Inc (MO) Q3 2018 Earnings Conference Call Transcript MO earnings call for the  
 period ending September 30, 2018 (Oct. 25, 2018), <https://www.fool.com/earnings/call-transcripts/2018/10/25/altria-group-inc-mo-q3-2018-earnings-conference-ca.aspx>.

1 thought that the two actions that we took addressed the drivers of the increased youth  
2 usage here in the short run.<sup>852</sup>

3 657. Willard emphasized that Altria's withdrawal of its own pod-based products was  
4 intended to address youth use: "[W]e really feel like in light of this dramatic increase in youth usage,  
5 withdrawing those products until the PMTA is filed is one path forward." He later said: "And frankly,  
6 the actions we took were the actions that we thought we could take that would have the biggest impact  
7 on addressing the increased use of e-vapor products by youth . . . we wanted to make a significant  
8 contribution to addressing the issue."<sup>853</sup> As noted above, however, it has since been reported that Altria  
9 "pulled its e-cigarettes off the market" not out of concern for the epidemic of youth nicotine addiction  
10 that JLI created, but because a non-compete clause was a "part of its deal with J[LI]."<sup>854</sup>

12 658. Thus, while Altria publicly announced that it would pull its pod-based products to  
13 combat youth usage, and publicly seemed to support removal of youth-friendly flavors, its defense of  
14 mint as a tobacco-analog was actually part of the scheme to protect the profits associated with JLI's  
15 mint JUUL pods, one of JLI's strongest products with the highest nicotine content and highest  
16 popularity among non-smokers and youth.

17 659. In support of his arguments to the FDA that mint was a flavor for adult smokers,  
18 Willard cited to a study that Altria Client Services had conducted and presented at a conference that  
19 JLI attended.<sup>855</sup> But Willard did *not* disclose that Altria Client Services' "study" was merely a "quasi-  
20 experimental online survey" and not a true scientific study.<sup>856</sup> Notably, JLI's current CEO, K.C.  
21

22  
23 <sup>852</sup> *Id.*

24 <sup>853</sup> *Id.*

25 <sup>854</sup> *Id.*

26 <sup>855</sup> Jessica Parker Zdinak, Ph.D., *E-vapor Product Appeal Among Tobacco Users and Non-users and*  
27 *the Role of Flavor in Tobacco Harm Reduction*, 72nd Tobacco Science Research Conference (Sept.  
28 18, 2018), [https://sciences.altria.com/library/-](https://sciences.altria.com/library/-/media/Project/Altria/Sciences/library/conferences/2018%20TSRC%20J%20Zdniak%20Presentation.pdf)  
pdf.

<sup>856</sup> *Id.*

1 Crosthwaite, was the Vice President of Strategy and Business Development of Altria Client Services  
 2 when it conducted Altria's mint "study" in Spring 2017, the same time that the Management  
 3 Defendants and Altria and Altria Client Services began their "confidential negotiations."<sup>857</sup> Willard did  
 4 not disclose that this study was contradicted by the "youth prevention" data provided by JLI during its  
 5 acquisition due-diligence showing that mint was popular among teens.

6  
 7 660. Through these letters, Altria sought to prevent the FDA—which was actively  
 8 considering regulating flavors<sup>858</sup>—from banning JLI's mint JUULpods.

9 661. Acting in concert, JLI and Altria committed acts of mail or wire fraud when (1) JLI  
 10 transmitted its Action Plan to the FDA and the public; and (2) Altria transmitted Willard's letter to the  
 11 FDA.

12  
 13 662. On October 25, 2018, the same day Howard Willard sent the FDA his letter fraudulently  
 14 misrepresenting the Mint flavor and Altria's view on pod-based products, Willard provided Pritzker  
 15 and Valani with a copy of the very same letter.<sup>859</sup>

16 663. It is no surprise that Altria was coordinating with Pritzker and Valani on the scheme to  
 17 protect flavors. It knew a potential ban on flavors would have a material impact on the ability of JLI to  
 18 continue its youth sales, and on the value of those sales. For example, in November 2018, Crosthwaite  
 19 asked Brian Blaylock at Altria Client Services to model a scenario for Altria's investment in JLI where  
 20 the FDA enacts a flavor ban.<sup>860</sup>

21  
 22 664. At the heart of these acts of fraud was Defendants' characterization of mint as a tobacco  
 23 product that was targeted to adult smokers. This characterization was fraudulent because Defendants

24  
 25 <sup>857</sup> Letter from Howard Willard III, Altria to Senator Durbin, et. al. (Oct. 14, 2019).

26 <sup>858</sup> Alex Lardieri, *FDA Considers Ban on E-Cigarette Flavors Amid 'Epidemic' Use By Teens*, U.S.  
 27 News & World Report (Sept. 12, 2018), [https://www.usnews.com/news/health-care-  
 news/articles/2018-09-12/fda-considers-ban-on-e-cigarette-flavors-amid-epidemic-use-by-teens](https://www.usnews.com/news/health-care-news/articles/2018-09-12/fda-considers-ban-on-e-cigarette-flavors-amid-epidemic-use-by-teens).

28 <sup>859</sup> JLIFTC00653389

<sup>860</sup> ALGAT0000389729.

1 knew kids prefer mint flavor and that JLI designed mint to be one of JLI's most potent products. Altria  
2 supported this plan and helped execute it. Together, these actions by JLI and Altria ensured that mint  
3 would remain available to youths for many months, furthering their efforts to maintain and expand the  
4 number of nicotine-addicted e-cigarette users in order to ensure a steady and growing customer base.

5  
6 665. The deceptive scheme worked—the FDA did not protest JLI and Altria's plan. And on  
7 December 20, 2018, one month after JLI announced its Action Plan to keep selling mint, Altria made a  
8 \$12.8 billion equity investment in JLI.

9 666. By February of 2019, the FDA became aware that it had been deceived by JLI and  
10 Altria. On February 6, 2019, then-FDA commissioner Gottlieb wrote JLI and Altria demanding in-  
11 person meetings, excoriating Altria for its “newly announced plans with JUUL [that] *contradict the*  
12 *commitments you made to the FDA*” in a prior meeting and Willard's October 25, 2018 letter to the  
13 FDA.<sup>861</sup> Gottlieb's letter to JLI alleged that JLI's conduct was “inconsistent with its previous  
14 representations to the FDA.”<sup>862</sup>

15  
16 667. The FDA demanded Altria be prepared to explain itself regarding its “plans to stop  
17 marketing e-cigarettes and to address the crisis of youth use of e-cigarettes.” Then-Commissioner  
18 Gottlieb told Altria that “deeply concerning data” shows that “youth use of JUUL represents a  
19 significant proportion of overall use of e-cigarette products by children” and despite any alleged steps  
20 the companies had taken to address the issue he “ha[d] no reason to believe these youth patterns of use  
21 are abating in the near term, and they certainly do not appear to be reversing.”  
22  
23  
24  
25  
26

27 <sup>861</sup> Letter from Scott Gottlieb, FDA to Howard Willard, Altria (Feb. 9, 2019).

28 <sup>862</sup> Letter from Scott Gottlieb, FDA to Kevin Burns, JUUL Labs, Inc. (Feb. 9, 2019).

668. JLI and Altria met with Gottlieb in March 2019 in a meeting the then-Commissioner described as “difficult.”<sup>863</sup> Gottlieb “did not come away with any evidence that public health concerns drove Altria’s decision to invest in JLI, and instead said it looked like a business decision. According to reporting by the New York Times, Gottlieb angrily criticized JLI’s lobbying of Congress and the White House, stating:

We have taken your meetings, returned your calls and I had personally met with you more times than I met with any other regulated company, and yet you still tried to go around us to the Hill and White House and undermine our public health efforts. I was trying to curb the illegal use by kids of your product and you are fighting me on it.<sup>864</sup>

669. But just a week after the “difficult” meeting with JLI and Altria, Gottlieb posted a statement about the FDA’s new e-cigarette policy, proposing to ban all flavors *except* “tobacco-, mint- and menthol-flavored products.”<sup>865</sup> He cited the strong support of President Trump (whose administration JLI had aggressively lobbied<sup>866</sup>), and also cited “recent evidence indicat[ing] that mint- and menthol-flavored ENDS products are preferred more by adults than minors.”<sup>867</sup> Just a few weeks later, Gottlieb resigned from his position as commissioner of the FDA.

670. The scheme had succeeded in saving mint JUUL pods, as well as each Defendant’s bottom line. JLI’s sale of mint JUUL pods rose from one third of its sales in September 2018 to

<sup>863</sup> Kate Rooney & Angelica LaVito, *Altria Shares Fall After FDA’s Gottlieb Describes ‘Difficult’ Meeting on Juul*, CNBC (Mar. 19, 2019), <https://www.cnbc.com/2019/03/19/altria-shares-fall-after-fdas-gottlieb-describes-difficult-meeting-on-juul.html>.

<sup>864</sup> Julie Creswell & Sheila Kaplan, *How Juul Hooked a Generation on Nicotine*, N.Y. Times (Nov. 24, 2019), <https://www.nytimes.com/2019/11/23/health/juul-vaping-crisis.html>.

<sup>865</sup> News Release, *Statement from FDA Commissioner Scott Gottlieb, M.D., on advancing new policies aimed at preventing youth access to, and appeal of, flavored tobacco products, including e-cigarettes and cigars*, U.S. FDA (Mar. 13, 2019), <https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-advancing-new-policies-aimed-preventing-youth-access>.

<sup>866</sup> Evan Sully & Ben Brody, *JLI Spent Record \$1.2 Million Lobbying as Regulators Stepped Up*, Wash. Post (Oct. 22, 2019), [https://www.washingtonpost.com/business/on-small-business/juul-spent-record-12-million-lobbying-as-regulators-stepped-up/2019/10/22/2a0dbc52-f4de-11e9-b2d2-1f37c9d82dbb\\_story.html](https://www.washingtonpost.com/business/on-small-business/juul-spent-record-12-million-lobbying-as-regulators-stepped-up/2019/10/22/2a0dbc52-f4de-11e9-b2d2-1f37c9d82dbb_story.html).

<sup>867</sup> *Id.*



1 approximately two thirds in February 2019. JLI's 2019 revenues were estimated to be between \$2.36  
 2 billion and \$3.4 billion, and mint JUUL pods accounted for approximately 75% of JLI's total 2019  
 3 sales. And because mint remained on the market until JLI withdrew it in November 2019 in the face of  
 4 growing scrutiny,<sup>868</sup> thousands, if not millions, of underage JUUL users suffered the consequences.

5 671. As former New York City Mayor Mike Bloomberg stated: "JUUL's decision to keep  
 6 mint- and menthol-flavored e-cigarettes on the shelves is a page right out of the tobacco industry's  
 7 playbook."<sup>869</sup>

8 672. JLI continues to sell menthol-flavored products.<sup>870</sup>

9  
 10 **3. In Response to the Public Health Crisis Created by JUUL, the FDA Belatedly**  
 11 **Tried to Slow the Epidemic.**

12 673. In 2017, the FDA announced that it would be taking steps to regulate e-cigarette devices  
 13 such as JUUL. In late 2017, the FDA initiated its investigation of e-cigarette companies' advertising  
 14 and sales practices. But, as noted above, the FDA's 2017 Compliance Policy issued a four-year  
 15 extension for compliance with the 2016 deeming rule, apparently to "balance between regulation and  
 16 encouraging development of innovative tobacco products that may be less harmful than cigarettes."<sup>871</sup>  
 17 In March 2018, the 2017 Compliance Policy was challenged by the American Academy of Pediatrics,  
 18 along with other public health organizations concerned that a compliance extension for the e-cigarette  
 19  
 20  
 21  
 22

23 <sup>868</sup> Ellen Huet, *JLI Pulls Mint-Flavor Vaping Products, but Menthol Remains*, Bloomberg (Nov. 7,  
 24 2019), [https://www.bloomberg.com/news/articles/2019-11-07/juul-stops-selling-mint-flavored-](https://www.bloomberg.com/news/articles/2019-11-07/juul-stops-selling-mint-flavored-vaping-products)  
 25 [vaping-products](https://www.bloomberg.com/news/articles/2019-11-07/juul-stops-selling-mint-flavored-vaping-products).

26 <sup>869</sup> *Id.*

27 <sup>870</sup> Sheila Kaplan, *Juul Halts Sales of Mint, Its Top-Selling e-Cigarette Flavor*, N.Y. Times (Nov. 7,  
 28 2019), <https://www.nytimes.com/2019/11/07/health/vaping-juul-mint-flavors.html>.

<sup>871</sup> *Enforcement Priorities for Electronic Nicotine Delivery Systems (ENDS) and Other Deemed Products on the Market Without Premarket Authorization*, U.S. FDA (Jan. 2020), <https://www.fda.gov/media/133880/download>.

1 industry would allow more e-cigarette products into the market and continue to addict thousands of  
2 youth.<sup>872</sup>

3 674. In March 2019, the FDA drafted guidance that modified the 2017 Compliance Policy,  
4 but it did not go into full effect. However, on May 15, 2019, the lawsuit filed by the American  
5 Academy of Pediatrics was successful—the U.S. District Court for the District of Maryland vacated  
6 the 2017 Compliance Policy, and directed the FDA to “require that premarket authorization  
7 applications for all new deemed products” (“new” referred to any product launched after February 15,  
8 2007 and thus would include JUUL) be submitted within ten months, by May 2020.<sup>873</sup>

9 675. In January 2020, the FDA issued: Enforcement Priorities for Electronic Nicotine  
10 Delivery Systems (ENDS) and Other Deemed Products on the Market Without Premarket  
11 Authorization: Guidance for Industry (2020 FDA Guidance), directed at the e-cigarette industry, which  
12 detailed the FDA’s plan to prioritize enforcement of regulations prohibiting the sale of flavored e-  
13 cigarette products and prohibiting the targeting of youth and minors.<sup>874</sup> The 2020 FDA Guidance  
14 focused on flavored e-cigarettes that appeal to children, including fruit and mint: “[C]ompanies that do  
15 not cease manufacture, distribution and sale of unauthorized flavored cartridge-based e-  
16 cigarettes . . . within 30 days risk FDA enforcement actions.”<sup>875</sup>

17  
18  
19 **4. The Government’s Efforts to Address the JUUL Crisis Were Too Late and the**  
20 **Damage Has Already Been Done**

21 676. By the time the FDA acted, youth consumption of e-cigarettes had already reached an  
22 all-time high, and the e-cigarette industry’s presence on social media became an unstoppable force.  
23

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24 <sup>872</sup> *Id.*

25 <sup>873</sup> *Id.*; *Am. Academy of Pediatrics v. FDA*, 379 F. Supp. 3d 461, 496 (D. Md. 2019).

26 <sup>874</sup> *Id.*

27 <sup>875</sup> News Release, *FDA Finalizes Enforcement Policy on Unauthorized Flavored Cartridge-Based E-*  
28 *Cigarettes That Appeal to Children, Including Fruit and Mint*, U.S. FDA (Jan. 2, 2020),  
<https://www.fda.gov/news-events/press-announcements/fda-finalizes-enforcement-policy-unauthorized-flavored-cartridge-based-e-cigarettes-appeal-children>.

1 The 2020 FDA Guidance acknowledges that two of the largest 2019 surveys of youth cigarette use  
 2 found that e-cigarette use had reached the highest levels ever recorded.<sup>876</sup> By December 2019, there  
 3 were over 2,500 reported cases of e-cigarette related hospitalization for lung injury, including over  
 4 fifty confirmed deaths.<sup>877</sup> Despite the FDA’s efforts between 2017 and 2019, youth consumption of e-  
 5 cigarettes doubled among middle and high school students over the same period.<sup>878</sup> In 2019, the total  
 6 number of middle and high school students reporting current use of e-cigarettes surpassed five million  
 7 for the first time in history.<sup>879</sup>

8  
 9 677. JLI’s presence on social media has also persisted, even without further initiation by  
 10 JLI—the hallmark of a successful viral marketing campaign. When the “#juul” hashtag was first used  
 11 on social media, it was a series of thirteen tweets on Twitter. By the time JLI announced it would shut  
 12 down its Instagram account, “#juul” had been featured in over 250,000 posts on Instagram. A study by  
 13 Stanford University found that in the eight months after JLI ceased all promotional postings,  
 14 community posting accelerated, to nearly half a million posts. Whereas before JLI exited Instagram,  
 15 “#juul” appeared on average in 315 posts per day, that number tripled to 1084 posts per day after JLI  
 16 shut down its Instagram account.<sup>880</sup>

17  
 18 678. The FDA’s anti-e-cigarette campaign on social media was aimed at youth and middle  
 19 and high school students. The campaign used the slogan “The Real Cost” to educate youth on social  
 20 media platforms about the health impacts of e-cigarette consumption—the real cost of using e-  
 21

22  
 23 <sup>876</sup> *Enforcement Priorities for Electronic Nicotine Delivery Systems (ENDS) and Other Deemed*  
 24 *Products on the Market Without Premarket Authorization*, U.S. FDA (Jan. 2020),  
 25 <https://www.fda.gov/media/133880/download>.

26 <sup>877</sup> Karen A. Cullen et al., *E-cigarette Use Among Youth in the United States, 2019*, 322 JAMA 2095  
 27 (2019).

28 <sup>878</sup> *Id.*

<sup>879</sup> *Id.*

<sup>880</sup> Robert K. Jackler et al., *Rapid Growth of JUUL Hashtags After the Company Ceased Social Media*  
*Promotion*, Stanford Research Into the Impact of Tobacco Advertising (July 22, 2019),  
[http://tobacco.stanford.edu/tobacco\\_main/publications/Hashtag\\_JUUL\\_Project\\_7-22-19F.pdf](http://tobacco.stanford.edu/tobacco_main/publications/Hashtag_JUUL_Project_7-22-19F.pdf).

cigarettes. A recent study from the University of California Berkeley found that since September 2018, when the FDA's social media campaign began, the hashtag "#TheRealCost" was used about fifty times per month on Instagram. By comparison, e-cigarette related hashtags were used as many as 10,000 times more often. Despite the FDA's social media intervention, the number of e-cigarette related posts, and the median number of likes (a strong metric of viewer engagement) the posts received, increased three-fold and six-fold, respectively.<sup>881</sup>

679. In short, by the time the FDA reacted to the epidemic created by Defendants, millions of youth were addicted to e-cigarettes and nicotine, and were sharing e-cigarette related posts on social media on their own.

## V. GOVERNMENT ENTITY FACTUAL ALLEGATIONS

### A. E-cigarette Use in Schools

680. In addition to severe health consequences, widespread e-cigarette use, and particularly JUUL use, has placed severe burdens on society and schools in particular. It is not an overstatement to say that JUUL has changed the high school and even middle school experience of students across the nation. As one e-cigarette shop manager told KOMO News, "It's the new high school thing. Everyone's got the JUUL."<sup>882</sup>

681. The JUUL youth addiction epidemic spread rapidly across high schools in the United States. JUUL surged in popularity, largely through social media networks, and created patterns of youth usage, illegal youth transactions, and addiction, that are consistent with the account from Reddit that described widespread JUUL use discussed above.

<sup>881</sup> Julia Vassey, *#Vape: Measuring E-cigarette Influence on Instagram With Deep Learning and Text Analysis*, 4 *Frontiers in Commc'n* 75 (2020), <https://www.frontiersin.org/articles/10.3389/fcomm.2019.00075/full>.

<sup>882</sup> *Juuling at School*, KOMO News (2019), <https://komonews.com/news/healthworks/dangerous-teen-trend-juuling-at-school>.

682. E-cigarette use has completely changed school bathrooms—now known as “the Juul room.”<sup>883</sup> As one high school student explained, “it’s just a cloud.”<sup>884</sup>

683. As another high school student explained, “You can pull it out, you can have it anywhere. To smoke a cigarette you have to hit the bus stop. You want a Juul you hit the bathroom, it’s easy.”<sup>885</sup> He added that JLI “market[s] it as an alternative to cigarettes but really it’s a bunch of kids who have never picked up a pack and they’re starting their nicotine addiction there.”<sup>886</sup> Students at another high school stated that classmates had “set off the fire alarm four times last year from vaping in the bathrooms [at school],” adding that it is commonplace to see students using e-cigarettes in school bathrooms or in the parking lot.<sup>887</sup>

684. An April 20, 2018 article in *The Wall Street Journal* described the problems parents and schools are facing with the meteoric rise of nicotine use by America’s youth:

At Northern High School in Dillsburg, Pa., Principal Steve Lehman’s locked safe, which once contained the occasional pack of confiscated cigarettes, is now filled with around 40 devices that look like flash drives.

The device is called a Juul and it is a type of e-cigarette that delivers a powerful dose of nicotine, derived from tobacco, in a patented salt solution that smokers say closely mimics the feeling of inhaling cigarettes. It has become a coveted teen status symbol and a growing problem in high schools and middle schools, spreading with a speed that has taken teachers, parents and school administrators by surprise.

<sup>883</sup> Moriah Balingit, *In the ‘Juul room’: E-cigarettes spawn a form of teen addiction that worries doctors, parents and schools*, Wash. Post (July 26, 2019), [https://www.washingtonpost.com/local/education/helpless-to-the-draw-of-nicotine-doctors-parents-and-schools-grapple-with-teens-addicted-to-e-cigarettes/2019/07/25/e1e8ac9c-830a-11e9-933d-7501070ee669\\_story.html](https://www.washingtonpost.com/local/education/helpless-to-the-draw-of-nicotine-doctors-parents-and-schools-grapple-with-teens-addicted-to-e-cigarettes/2019/07/25/e1e8ac9c-830a-11e9-933d-7501070ee669_story.html).

<sup>884</sup> Greta Jochem, *Juuling in School: e-Cigarette Use Prevalent Among Local Youth*, Daily Hampshire Gazette (Nov. 13, 2018), <https://www.gazettenet.com/Juuling-in-Schools-21439655>.

<sup>885</sup> Alison Grande, *‘Juuling’: Vaping device that looks like USB drive popular with teens*, KIRO 7 (Dec. 8, 2017), <https://www.kiro7.com/news/local/juuling-vaping-device-that-looks-like-usb-drive-popular-with-teens/660965605/>.

<sup>886</sup> *Id.*

<sup>887</sup> Manisha Jha, *‘You need to stop vaping right now’: Students and faculty react to Washington vape ban*, The Daily, U. of Wash. (Sept. 30, 2019), [http://www.dailyuw.com/news/article\\_960d8692-e324-11e9-870c-9f9d571115d6.html](http://www.dailyuw.com/news/article_960d8692-e324-11e9-870c-9f9d571115d6.html).

\* \* \*

After two decades of declining teen cigarette use, “JUULing” is exploding. The JUUL liquid’s 5% nicotine concentration is significantly higher than that of most other commercially available e-cigarettes. JUUL Labs Inc., maker of the device, says one liquid pod delivers nicotine comparable to that delivered by a pack of cigarettes, or 200 puffs—important for adult smokers trying to switch to an e-cigarette. It is also part of what attracts teens to the product, which some experts say is potentially as addictive as cigarettes and has schools and parents scrambling to get a grip on the problem.<sup>888</sup>

685. This impact was only made worse by JLI intentionally targeting schools, as described above.

686. Such rampant e-cigarette use has effectively added another category to teachers’ and school administrators’ job descriptions; many now receive special training to respond to the various problems that youth e-cigarette use presents, both in and out of the classroom. A national survey of middle schools and high schools found that 44.4% of schools have had to implement policies to address JUUL use.<sup>889</sup> Participants in the survey reported multiple barriers to enforcing these policies, including the discreet appearance of the product, difficulty pinpointing the vapor or scent, and the addictive nature of the product.

687. Across the United States, schools have had to divert resources and administrators have had to go to extreme lengths to respond to the ever-growing number of students using e-cigarettes on school grounds, including in restrooms. According to the *Truth Initiative*, more than 40% of all teachers and administrators reported responding to the JUUL crisis through camera surveillance near the school’s restroom; almost half (46%) reported camera surveillance elsewhere in the school; and

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<sup>888</sup> Anne Marie Chaker, *Schools and Parents Fight a Juul E-Cigarette Epidemic*, Wall St. J. (Apr. 4, 2018), <https://www.wsj.com/articles/schools-parents-fight-a-juul-e-cigarette-epidemic-1522677246>.

<sup>889</sup> Barbara A. Schillo, PhD et al., *JUUL in School: Teacher and Administrator Awareness and Policies of E-Cigarettes and JUUL in U.S. Middle and High Schools*, Truth Initiative Vol. 21(1) Health Promotion Practice 20-24 (Sept. 18, 2019), [https://journals.sagepub.com/doi/full/10.1177/1524839919868222?url\\_ver=Z39.88-2003&rfr\\_id=ori:rid:crossref.org&rfr\\_dat=cr\\_pub%3dpubmed](https://journals.sagepub.com/doi/full/10.1177/1524839919868222?url_ver=Z39.88-2003&rfr_id=ori:rid:crossref.org&rfr_dat=cr_pub%3dpubmed).

23% reported using assigned teachers for restroom surveillance.<sup>890</sup> Some schools have responded by removing bathroom doors or even shutting bathrooms down, and schools have banned flash drives to avoid any confusion between flash drives and JUULs. Schools have also paid thousands of dollars to install special monitors to detect e-cigarette use, which they say is a small price to pay compared to the plumbing repairs otherwise spent as a result of students flushing e-cigarette paraphernalia down toilets. Other school districts have sought state grant money to create new positions for tobacco prevention supervisors, who get phone alerts when e-cigarette smoke is detected in bathrooms.

688. Many schools have also shifted their disciplinary policies in order to effectively address the youth e-cigarette epidemic. Rather than immediately suspending students for a first offense, school districts have created anti-e-cigarette curricula which students are required to follow in sessions held outside of normal school hours, including on Saturdays. Teachers prepare lessons and study materials for these sessions with information on the marketing and health dangers of e-cigarettes—extra work which requires teachers to work atypical hours early in the mornings and on weekends. Some schools will increase their drug testing budget to include random nicotine tests for students before they join extracurricular activities. Under this drug-testing protocol, first offenders will undergo drug and alcohol educational programming; second and third offenders will be forced to sit out from extracurricular activities and attend substance abuse counseling.

689. A July 26, 2019 article in *The Washington Post* noted the measures some schools were taking to combat “JUULing” by students:

Many schools are at a loss for how to deal with Juuls and other e-cigarettes. Some educators report increases in the number of students being suspended after they’re caught with e-cigarettes.

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<sup>890</sup> *How are schools responding to JUUL and the youth e-cigarette epidemic?*, Truth Initiative (Jan. 18, 2019), <https://truthinitiative.org/research-resources/emerging-tobacco-products/how-are-schools-responding-juul-and-youth-e-cigarette>.



Desperate school administrators have banned USB drives because they're indistinguishable from Juuls. Others removed bathroom doors because teens were regularly gathering there to vape, and some have even started searching students.

Jonathon Bryant, chief administrator of Lincoln Charter School in North Carolina, estimated that three-quarters of suspensions in the just-completed academic year were related to vaping, and some students were suspended more than once.<sup>891</sup>

690. JUUL's prevalence in schools is not a coincidence; JLI actively sought to enter school campuses. By June 2017, JLI began developing what they claimed to be a "youth prevention program[.]"<sup>892</sup> By December 2017, JLI's venture included extensive work with schools.<sup>893</sup>

691. As discussed above, the U.S. House Subcommittee on Economic and Consumer Policy ("Subcommittee") conducted a months-long investigation of JLI, including reviewing tens of thousands of internal documents, and concluded that JLI "deliberately targeted children in order to become the nation's largest seller of e-cigarettes."<sup>894</sup> The Subcommittee found that "(1) JUUL deployed a sophisticated program to enter schools and convey its messaging directly to teenage children; (2) JUUL also targeted teenagers and children, as young as eight years-old, in summer camps and public out-of-school programs; and (3) JUUL recruited thousands of online 'influencers' to market to teens."<sup>895</sup>

692. According to the Subcommittee, JLI was willing to pay schools and organizations hundreds of thousands of dollars to have more direct access to kids. For example, JLI paid a Baltimore charter school organization \$134,000 to start a summer camp to teach kids healthy lifestyles, for which

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<sup>891</sup> Moriah Balingit, *In the 'Juul room': E-cigarettes spawn a form of teen addiction that worries doctors, parents and schools*, Wash. Post (July 26, 2019), [https://www.washingtonpost.com/local/education/helpless-to-the-draw-of-nicotine-doctors-parents-and-schools-grapple-with-teens-addicted-to-e-cigarettes/2019/07/25/e1e8ac9c-830a-11e9-933d-7501070ee669\\_story.html](https://www.washingtonpost.com/local/education/helpless-to-the-draw-of-nicotine-doctors-parents-and-schools-grapple-with-teens-addicted-to-e-cigarettes/2019/07/25/e1e8ac9c-830a-11e9-933d-7501070ee669_story.html).

<sup>892</sup> See, e.g., INREJUUL\_00211242-243 at 242.

<sup>893</sup> INREJUUL\_00173409.

<sup>894</sup> Memorandum, U.S. House Subcommittee on Econ. & Consumer Policy (July 25, 2019), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Supplemental%20Memo.pdf>.

<sup>895</sup> *Id.*

1 JLI itself would provide the curriculum.<sup>896</sup> Participants were “recruited from grades 3 through 12.”<sup>897</sup>  
 2 JLI also offered schools \$10,000 to talk to students on campus and gave the Police Activities League in  
 3 Richmond, California, almost \$90,000 to provide JLI’s own e-cigarette education program, “Moving  
 4 On,” to teenage students suspended for using cigarettes. The Richmond Diversion Program targeted  
 5 “youth, aged 12-17, who face suspension from school for using e-cigarettes and/or marijuana” and  
 6 “juveniles who have committed misdemeanour (lesser category) offenses” and required students to  
 7 “participate in the JUUL labs developed program, Moving Beyond,” for as long as ten weeks.<sup>898</sup>

9 693. Community members testified before the Subcommittee as to the content of one of  
 10 JLI’s presentations in school. During JLI’s presentation to students, “[n]o parents or teachers were in  
 11 the room, and JUUL’s messaging was that the product was ‘totally safe.’ The presenter even  
 12 demonstrated to the kids how to use a JUUL.”<sup>899</sup>

14 694. In 2018, a representative from JLI spoke at a high school during a presentation for ninth  
 15 graders, stating that JUUL “was much safer than cigarettes,” that the “FDA would approve it any day,”  
 16 that JUUL was “totally safe,” that JUUL was a “safer alternative than smoking cigarettes, and it would  
 17 be better for the kid to use,” and that the “FDA was about to come out and say it [JUUL] was 99%  
 18 safer than cigarettes . . . and that . . . would happen very soon[.]”<sup>900</sup> “The presenter even demonstrated  
 19 to the kids how to use a JUUL.”<sup>901</sup>

22 <sup>896</sup> See INREJUUL\_00194247-251; see also JLI-HOR-00003711-712 (invoice to JLI from The  
 Freedom & Democracy Schools, Inc. for \$134,000 dated June 21, 2018).

23 <sup>897</sup> INREJUUL\_0019427-251 at 428.

24 <sup>898</sup> JLI-HOR-00002180-184 at 181-182.

25 <sup>899</sup> Committee Staff, *Memorandum re: Supplemental Memo for Hearing on “Examining JUUL’s Role  
 in the Youth Nicotine Epidemic: Parts 1 & II* (“Supplemental Memo for Hearing”) at 1,  
 Subcommittee on Econ. & Consumer Policy (July 25, 2019),

26 <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Supplemental%20Memo.pdf>.

27 <sup>900</sup> *Juul Labs, Inc. Warning Letter*, FDA (Sept. 9, 2019), <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/juul-labs-inc-590950-09092019>.

28 <sup>901</sup> Subcommittee on Economic and Consumer Policy Memo (July 25, 2019).

695. In the FDA’s September 9, 2019 Warning Letter, which discussed this presentation to ninth graders, the agency noted its “concern is amplified by the epidemic rate of increase in youth use of ENDS products, including JUUL’s products, and evidence that ENDS products contribute to youth use of, and addiction to, nicotine, to which youth are especially vulnerable.”<sup>902</sup>

696. The FDA’s Center for Tobacco Products issued a separate letter to JUUL CEO Kevin Burns, requesting “documents and information from JUUL Labs, Inc. (JUUL) regarding JUUL’s marketing, advertising, promotional, and educational campaigns, as well as certain product development activity.”<sup>903</sup> The FDA also issued a news release on September 9, 2019, in which it chided JUUL for its role in the youth e-cigarette epidemic, noting “[s]ome of this youth use appears to have been a direct result of JUUL’s *product design and promotional activities* and outreach efforts,” in particular, its outreach efforts to students.<sup>904</sup>

697. The Center for Tobacco Products letter requested documents and explanations on multiple topics, including, but not limited to:

Ms. Meredith Berkman, Co-founder, Parents Against Vaping e-cigarettes (PAVe), testified that, “In California, a retired school superintendent was offering schools in his state and in Massachusetts money if they would implement the anti-JUUL curriculum that...a man named Bruce Harder was offering on JUUL’s behalf.”

\* \* \*

On July 25, 2019, in response to questions from Chairman Krishnamoorthi about JUUL’s program to pay schools \$10,000 or more to use a JUUL “youth prevention” curriculum, Ms. Ashley Gould, Chief Administrative Officer, JUUL Labs, Inc., testified: “That is not currently the case. We ended that program in the fall of 2018,” and that, “...there were

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<sup>902</sup> *Id.*

<sup>903</sup> Letter from Mitchell Zeller, Director, Center for Tobacco Products, to Kevin Burns, CEO of JUUL Labs, Inc. at 1 (Sept. 9, 2019), <https://www.fda.gov/media/130859/download>.

<sup>904</sup> *FDA warns JUUL Labs for marketing unauthorized modified risk tobacco products, including in outreach to youth*, FDA (Sept. 9, 2019), <https://www.fda.gov/news-events/press-announcements/fda-warns-juul-labs-marketing-unauthorized-modified-risk-tobacco-products-including-outreach-youth> (emphasis added) Letter from Center for Tobacco Products, to Kevin Burns, CEO of JUUL Labs, Inc. (Sept. 9, 2019), <https://www.fda.gov/media/130859/download>.

1 six schools that received funding from JUUL to implement programming to prevent teen  
2 vaping....”

3 In addition, in response to questions from Chairman Krishnamoorthi about internal JUUL  
4 correspondence in 2018 about setting up a booth at a school health fair, Ms. Gould  
5 testified that JUUL ended its youth prevention program.<sup>905</sup>

6 698. JLI also sponsored a “Saturday School Program” in which students caught using e-  
7 cigarettes in school were presented with JLI-sponsored curriculum and snacks, and JLI “established the  
8 right to collect student information from the sessions.”<sup>906</sup> A JLI spokesman said the company is no  
9 longer funding such programs.

10 699. As mentioned above, the problems with JLI’s youth prevention programs were  
11 widespread. According to outside analyses, “the JUUL Curriculum is not portraying the harmful  
12 details of their product, similar to how past tobacco industry curricula left out details of the health risks  
13 of cigarette use.”<sup>907</sup> Although it is well-known that teaching children to deconstruct ads is one of the  
14 most effective prevention techniques, JLI programs entirely omitted this skill, and JLI’s curriculum  
15 barely mentioned JUUL products as among the potentially harmful products to avoid.<sup>908</sup> As one expert  
16 pointed out, “we know, more from anecdotal research, that [teens] may consider [JUULs] to be a  
17 vaping device, but they don’t call it that. So when you say to a young person, ‘Vapes or e-cigarettes are  
18 harmful,’ they say, ‘Oh I know, but I’m using a JUUL.’”<sup>909</sup>

21 <sup>905</sup> Letter from Mitchell Zeller, Director, Center for Tobacco Products, to Kevin Burns, CEO of JUUL  
22 Labs, Inc. at 2 (Sept. 9, 2019), <https://www.fda.gov/media/130859/download>.

23 <sup>906</sup> Committee Staff, *Memorandum re: Supplemental Memo for Hearing on “Examining JUUL’s Role*  
24 *in the Youth Nicotine Epidemic: Parts 1 & II* (“Supplemental Memo for Hearing”) at 2,  
25 Subcommittee on Econ. & Consumer Policy (July 25, 2019),  
26 <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Supplemental%20Memo.pdf>.

27 <sup>907</sup> Victoria Albert, *Juul Prevention Program Didn’t School Kids on Dangers, Expert Says: SMOKE*  
28 *AND MIRRORS. JUUL—which made up 68 percent of the e-cigarette market as of mid-June—seems*  
*to have taken a page from the playbook of Big Tobacco*, The Daily Beast (Oct. 19, 2018),  
<https://www.thedailybeast.com/juul-prevention-program-didnt-school-kids-on-dangers-expert-says>.

<sup>908</sup> *Id.*

<sup>909</sup> *Id.*

700. Internal emails confirm both that JLI employees knew about the similarities of JLI's "youth prevention program" to the earlier pretextual antismoking campaigns by the cigarette industry and that JLI management at the highest levels was personally involved in these efforts. In April 2018, Julie Henderson, the Youth Prevention Director, emailed school officials about "the optics of us attending a student health fair" because of "how much our efforts seem to duplicate those of big tobacco (Philip Morris attended fairs and carnivals where they distributed various branded items under the guise of 'youth prevention')." <sup>910</sup> She later wrote that she would "confirm our participation w[ith] Ashley & Kevin" <sup>911</sup>—an apparent reference to Kevin Burns, at the time the CEO of JLI, who would later personally approve JLI's involvement in school programs. In May 2018, Henderson spoke with former members of Philip Morris's "youth education" team, <sup>912</sup> and Ashley Gould received and forwarded what was described as "the paper that ended the Think Don't Smoke campaign undertaken by Philip Morris." <sup>913</sup> The paper concluded that "the Philip Morris's ['youth prevention'] campaign had a counterproductive influence." <sup>914</sup>

701. The Management Defendants were intimately involved in these "youth prevention" activities. For example, in April 2018, Defendants Valani and Pritzker edited a "youth prevention" press release, noting that they "don't want to get these small items wrong" and that they "think it's critical to get this right." <sup>915</sup>

<sup>910</sup> INREJUUL\_00197607-608 at 608.

<sup>911</sup> *Id.* at 607.

<sup>912</sup> INREJUUL\_00196624-625.

<sup>913</sup> INREJUUL\_00265202.

<sup>914</sup> Matthew C. Farrelly et al., *Getting to the Truth: Evaluating National Tobacco Countermarketing Campaigns*, 92 Am. J. Public Health 901 (2002), <https://www.industrydocuments.ucsf.edu/tobacco/docs/#id=nxhb0024>.

<sup>915</sup> JLI00151300.

1           702. JLI was aware that these out-of-school programs were, in the words of Henderson,  
2 “eerily similar” to the tactics of the tobacco industry.<sup>916</sup> Eventually, JLI ended this version of its youth  
3 prevention program, but the damage had been done: following the cigarette industry playbook, JLI had  
4 hooked more youth on nicotine.

5           703. As the sales of JUUL continued to mushroom, it was readily apparent, and widely  
6 reported, that the rapid growth in sales was due to the surging popularity of e-cigarette use among  
7 teenagers. By March 2018, multiple national news outlets including *National Public Radio*, *USA*  
8 *Today*, and *Business Insider* reported youth were using JUUL with alarming frequency, posting about  
9 using JUUL in school restrooms on social media, and bragging about being able to use the device in  
10 the classroom due to JUUL’s discreet design.

11           704. One of the priorities for JLI, Altria, and the Management Defendants was therefore to  
12 control the messaging and narrative around youth e-cigarette use. Faced with an urgent, growing public  
13 health crisis, national media attention, and the ire of the public, the FDA and members of Congress, the  
14 Defendants realized that dis-information campaign was urgently needed to protect its bottom line. This  
15 campaign was the “*Make the Switch*” campaign discussed above.

16           705. The “*Make the Switch*” campaign was a cover-up, and its goal was to convince the  
17 public, including schools and public health departments, that JUUL had never marketed to youth and  
18 was instead intended to be a smoking cessation device. This campaign was false. As mentioned above,  
19 one of JLI’s engineers admitted, “we’re not trying to design a cessation product at all . . . anything  
20 about health is not on our mind.”<sup>917</sup> And as described elsewhere herein, JLI and the Management  
21 Defendants directly targeted underage nonsmokers. Indeed, JLI did not mention the term “adult” or  
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27 <sup>916</sup> INREJUUL\_00194646.

28 <sup>917</sup> Kevin Roose, *Juul’s Convenient Smoke Screen*, N.Y. Times (Jan. 11, 2019),  
<https://www.nytimes.com/2019/01/11/technology/juul-cigarettes-marketing.html>.

“adult smoker” on its Twitter feed until July 5, 2017. JLI, the Management Defendants, and Altria were all well aware that such users made up a significant percentage of JLI’s customer base in 2018—in fact, they counted on this customer base to grow and preserve JUUL’s market share—and that the statements they disseminated regarding “Make the Switch” from smoking being JLI’s mission from the start were fraudulent, to the detriment of schools and public health departments.

706. As JUUL sales skyrocketed in 2017 and 2018 and schools quickly became overwhelmed by this public health crisis, everyone from tobacco industry giants to e-cigarette start-ups launched their own products to take advantage of the illicit youth e-cigarette market Defendants created, using the key elements of JUUL’s design: flavor pods, nicotine salts, and a tech-like appearance.

707. The cigarette industry, which already marketed e-cigarettes, launched “JUULalike” versions of their products in 2018, in flavors such as Mango Apricot and Green Apple, and with nicotine salt formulations and higher nicotine content than their earlier e-cigarettes.<sup>918</sup>

708. The launch of “JUULalike” products concerned Vince Willmore, Vice President of Communications for the Campaign for Tobacco-Free Kids. According to Willmore, “Juul is our biggest concern right as it is being widely used by kids across the country . . . [b]ut we are also concerned that the introduction of a growing number of Juul-like products could make the problem even worse.”<sup>919</sup> Willmore was not the only one worried. Then FDA Commissioner Gottlieb expressed

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<sup>918</sup> Rachel Becker, *Juul’s Nicotine Salts Are Dominating the Market – And Other Companies Want In*, The Verge (Nov. 21, 2018), <https://www.theverge.com/2018/11/21/18105969/juul-vaping-nicotine-salts-electronic-cigarettes-myblu-vuse-markten>; *blu Launches myblu E-Vapor Device*, CStore Decisions (Feb. 21, 2018), <https://cstoredecisions.com/2018/02/21/blu-launches-myblu-e-vapor-device/>; Angelica LaVito, *Juul’s momentum slips as NJOY woos customers with dollar e-cigarettes*, CNBC (Aug. 20, 2019), <https://www.cnbc.com/2019/08/20/juuls-momentum-slips-as-njoy-woos-customers-with-dollar-e-cigarettes.html>.

<sup>919</sup> Ben Tobin, *FDA targets e-cigarettes like Juul as teachers fear ‘epidemic’ use by students*, USA Today (Aug. 16, 2018), <https://www.usatoday.com/story/money/2018/08/16/juul-labs-back-school-teachers-e-cigarettes/917531002/>.



1 concern about products copying JUUL’s features, stating that such products “closely resemble a USB  
2 flash drive, have high levels of nicotine and emissions that are hard to see. These characteristics may  
3 facilitate youth use, by making the products more attractive to children and teens.”<sup>920</sup>

4  
5 709. Researchers from SRITA called it “a nicotine arms race,” writing that “JUUL’s success  
6 in the e-cigarette marketplace has spurred a variety of new pod-based products with exceptionally high  
7 nicotine.”<sup>921</sup> “As of September 2018,” the researchers wrote, “there were at least 39 JUUL knock off  
8 devices on the market”—none of which were sold prior to the introduction of JUUL.<sup>922</sup>

9 710. The rapid proliferation of e-cigarette products in JUUL’s wake and the speed with  
10 which the e-cigarette market evolves make it difficult to enact effective legislative and regulatory  
11 measures.

12 711. The Secretary of HHS recognized, “The United States has never seen an epidemic of  
13 substance use arise as quickly as our current epidemic of youth use of e-cigarettes.”<sup>923</sup> FDA  
14 Commissioner Stephen Hahn, M.D. added, “As we work to combat the troubling epidemic of youth e-  
15 cigarette use, the enforcement policy we’re issuing today confirms our commitment to dramatically  
16 limit children’s access to certain flavored e-cigarette products we know are so appealing to them—so-  
17 called cartridge-based products that are both easy to use and easily concealable.”<sup>924</sup>  
18  
19

20 <sup>920</sup> Scott Gottlieb, Statement from FDA Commissioner Scott Gottlieb, M.D., on new enforcement  
21 actions and a Youth Tobacco Prevention Plan to stop youth use of, and access to, JUUL and other e-  
22 cigarettes, FDA (Apr. 23, 2018), [https://www.fda.gov/news-events/press-announcements/statement-  
23 fda-commissioner-scott-gottlieb-md-new-enforcement-actions-and-youth-tobacco-  
prevention?utm\\_campaign=04242018\\_Statement\\_Youth%20Tobacco%20Prevention&utm\\_medium  
=email&utm\\_source=Eloqua](https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-new-enforcement-actions-and-youth-tobacco-prevention?utm_campaign=04242018_Statement_Youth%20Tobacco%20Prevention&utm_medium=email&utm_source=Eloqua).

24 <sup>921</sup> Robert K. Jackler & Divya Ramamurthi, *Nicotine arms race: JUUL and the high-nicotine product  
market*, 28 Tobacco Control 623-28 (2019), <https://tobaccocontrol.bmj.com/content/28/6/623>.

25 <sup>922</sup> *Id.*

26 <sup>923</sup> U.S. Food & Drug Administration, *FDA finalizes enforcement policy on unauthorized flavored  
cartridge-based e-cigarettes that appeal to children, including fruit and mint* (“FDA News Release”),  
27 FDA (Jan. 2, 2020), [https://www.fda.gov/news-events/press-announcements/fda-finalizes-  
enforcement-policy-unauthorized-flavored-cartridge-based-e-cigarettes-appeal-children](https://www.fda.gov/news-events/press-announcements/fda-finalizes-enforcement-policy-unauthorized-flavored-cartridge-based-e-cigarettes-appeal-children).

28 <sup>924</sup> *Id.*

1           712.    Enterprising companies recognized loopholes in a policy aimed only at cartridge-based  
 2 products and the opportunity to fill the demand for fruit-flavored nicotine created by JLI. Disposable e-  
 3 cigarettes have become increasingly popular with youth due to the youth e-cigarette market Defendant  
 4 JLI created. The use of disposable e-cigarettes is now “rampant” in schools, further intensifying this  
 5 public health crisis.<sup>925</sup>

6  
 7           713.    For every company inspired by JLI to sell candy-flavored e-cigarette products that exits  
 8 the market, more materialize to take its place, driven by the knowledge that there is a large market of  
 9 nicotine-addicted youth eager for their products, a market created by JLI.

10           714.    The rise in disposable products demonstrates why additional measures are necessary to  
 11 halt the spread of youth e-cigarette use.<sup>926</sup>

## 12           **B.     JUUL and Indian Tribes**

13  
 14           715.    It is no secret that smoking rates have continued to remain disproportionately high  
 15 among American Indians and Alaska Natives. According to the CDC, “American Indians/Alaska  
 16 Natives have the highest prevalence of cigarette smoking compared to all other racial/ethnic groups in  
 17 the United States,” but the progress made in recent years in reducing cigarette smoking within the  
 18 American Indian/Alaska Native population is quickly vanishing due to the explosive increase in the  
 19 use of JUUL vaping devices.

20           716.    More than 22% of American Indian and Alaska Native adults currently smoke cigarettes  
 21 compared to 13.7% of American adults overall. The reasons for this discrepancy are numerous but are  
 22 generally attributed to the fact that American Indians “suffer from the effects of historical trauma and  
 23

24  
 25 <sup>925</sup> Sheila Kaplan, *Teens Find a Big Loophole in the New Flavored Vaping Ban*, N.Y. Times (Jan. 31,  
 26 2020), <https://www.nytimes.com/2020/01/31/health/vaping-flavors-disposable.html>.

27 <sup>926</sup> *Press Release: Raising the Tobacco Age to 21 Won’t Stop the Youth E-Cigarette Epidemic and Is*  
 28 *Not a Substitute for Eliminating the Flavored Products that Lure Kids*, Tobacco Free Kids (Dec. 16,  
 2019), [https://www.tobaccofreekids.org/press-releases/2019\\_12\\_16\\_tobacco21\\_flavor](https://www.tobaccofreekids.org/press-releases/2019_12_16_tobacco21_flavor).

1 stressors in [their] lives, and have problems in the areas of poverty, housing, all of these social  
2 determinants of health.”

3 717. E-cigarette use has been and continues to be a growing problem for American Indian  
4 youth. According to National Youth Tobacco Survey data, 16.1% of American Indian and Alaska  
5 Native middle school students and 40.4% of American Indian and Alaska Native high school students  
6 were current users of e-cigarette products. This is much higher than the general population rate of  
7 10.5% of middle school students and 27.5% of high school students who use e-cigarette products.  
8

9 718. Defendants’ conduct in conspiring to target AI/AN youth is contrary to  
10 25 C.F.R. 140.17, which prohibits the sale of “tobacco, cigars, or cigarettes to any Indian under 18  
11 years of age.” Tribes (including those acting through their intertribal health organizations) have an  
12 obligation to protect their young members, and the federal prohibition of selling tobacco products and  
13 cigarettes to AI/AN youth highlights the federal recognition of the unique adverse situation of tribal  
14 youth.  
15

16 719. JLI has specifically and repeatedly targeted the American Indian population with false  
17 and misleading statements about its products. On February 5, 2020, the United States House of  
18 Representatives Subcommittee on Economic and Consumer Policy found that, among other damaging  
19 things, “JUUL’s targeting of Native American Tribes was more pervasive than initially known.” The  
20 Subcommittee:  
21

22 [E]xposed JUUL’s pervasive targeting of American Indian children by obtaining  
23 testimony about JUUL: (1) presenting to kids in school and falsely claiming that JUUL  
24 was ‘totally safe’; (2) sponsoring summer camp for kids as young as eight; (3) targeting  
25 Native Americans as guinea pigs for its product; (4) targeting other vulnerable  
26 populations, including veterans and minority communities; and (5) implementing a vast  
27 and sophisticated network of social media influencers. . . .

28 720. In particular, the Congressional Subcommittee received testimony from JLI that in a  
three-month span, between December 2018 and February 2019, it had specifically targeted at least

1 eight Indian Tribes; (i) the Moapa Band of the Paiute Tribe; (ii) the Lummi Nation; (iii) the Nooksack  
2 Tribe; (iv) the Cheyenne River Sioux Tribe; (v) the S’Klallam Tribe; (vi) the Chickasaw Nation;  
3 (vii) the Muckleshoot Tribe; and (viii) the Kalispel Tribe. JLI also admitted that it “had contact with  
4 representatives from other tribes” relating to its marketing initiatives, but the Subcommittee noted that  
5 JUUL has “refused to identify those additional tribes or to state how many it contacted.”  
6

7 721. The Congressional Subcommittee heard testimony that JLI representatives have  
8 approached leaders of various Indian Tribes, proposing a program under which tribal members would  
9 receive free JUUL vaping devices. JLI representatives told tribal leaders and members their product  
10 was less harmful than cigarettes and that cigarette smokers could switch to JLI’s cool electronic caping  
11 devices and cartridges as part of a cigarette-cessation “switching program.” For example,  
12 representatives of JLI made multiple claims to the Cheyenne River Sioux Tribe that JUUL is effective  
13 for smoking cessation and less harmful than other tobacco products.  
14

15 722. Ted Kwong, a spokesperson for JLI, publicly promoted the falsehood that JUUL  
16 products could help tribal members switch from combustible cigarettes, saying that, “Given the high  
17 smoking population among Native Americans, particularly compared to the total U.S. population, the  
18 intent of these programs was to provide Native Americans tribal members who were known smokers  
19 (21 years or older) with access to JUUL products, for purchase, to facilitate their switch from  
20 combustible use.”  
21

22 723. Representative Raj Krishnamoorthi (D-IL), Chairman of the Subcommittee, later stated  
23 in light of the evidence gathered, “Big Tobacco targeted Native Americans and caused them to have  
24 the highest rate of tobacco use in America. It is disturbing to see [JLI] following in Big Tobacco’s  
25 footsteps by preying on Native American communities.”  
26

27 724. The effect of JLI’s deceptive promotion of a “switching program” is that tribes and  
28 other Indian entities have expended resources on ineffective and even harmful programs that could

1 have otherwise been spent reducing tobacco use. Targeted tribes reasonably relied on JLI's  
2 misrepresentations about their products, worsening the e-cigarette epidemic and leading to the injuries  
3 described in this Complaint.

4 **C. Impact of the Youth E-Cigarette Crisis on Plaintiff Tulalip Tribes**

5 725. Plaintiff Tulalip Tribes is a sovereign Indian nation, the federally recognized successors  
6 in interest to the Snohomish, Snoqualmie, Skykomish, and associated dependent tribes and bands that  
7 signed the Treaty of Point Elliott in 1855. The traditional language of the Tulalip Tribes is  
8 Lushootseed. The citizenship of the Tribes presently consists of approximately 5,113 enrolled tribal  
9 members, with approximately 2,700 members residing on the 22,000-acre Tulalip Indian Reservation.  
10 Approximately 2,000 Tulalip Tribal Members are 18 or younger.

11 726. The Tribes has been directly and severely impacted by the e-cigarette epidemic and  
12 surge in vaping created by the Defendants' misconduct. Vaping by youth members of the Tribes has  
13 reversed their positive trend of decreased cigarette use and nicotine addiction. In Snohomish County,  
14 the area surrounding the Tulalip Tribes, youth combustible cigarette use has been declining for more  
15 than a decade. However, between 2016 and 2018, the rate of youth using e-cigarettes rose from 20% of  
16 12<sup>th</sup> graders to 30% of twelfth graders in just two years.

17 727. Defendants' activities have caused young members of the Tribes to become addicted to  
18 e-cigarette products like JUUL. Defendants' marketing strategy, advertising and product design  
19 directly targets minors, especially teenagers, and has significantly increased the use of JUUL and other  
20 e-cigarettes products amongst youth and underage members of the Tribes. Tribal members as young as  
21 15 years old have reported using e-cigarettes every day. Tribal youth also did not have a full  
22 understanding that e-cigarettes like JUUL were addictive and contained nicotine.  
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27

728. This increased use of nicotine products is particularly concerning given that Native American youth suffer from serious health consequences at significantly elevated levels in comparison to other populations.

729. Defendants' conduct has created a public health crisis in Plaintiff's community, and as a result Plaintiff has spent significant and unexpected levels of time and resources on addressing the pervasiveness of youth e-cigarette use. For example, recognizing the urgency of the vaping crisis for its youth, the Tribes began placing anti-vaping marketing materials in its tribal liaison offices in an effort to save its youth from the harm of the Defendants. They have placed placards showing quick-facts about smoking, cigarettes and vaping. Of particular interest and surprise to youth, are the statistics surrounding the fact that vaping one JUUL cartridge is equivalent to smoking 20 cigarettes.

730. Not only have Defendants' e-cigarette products addicted a new generation to nicotine, Defendants are also creating a hazardous waste problem in Plaintiff's community. JUUL e-cigarette products contain chemicals that can be toxic or fatal if ingested in their concentrated forms,<sup>927</sup> as well as lithium-ion batteries,<sup>928</sup> which cannot be safely disposed of in the normal stream of trash. Defendants' products also contain nicotine, which is an acutely hazardous waste. Nicotine is a toxic substance which can be absorbed dermally and can be fatal to humans in high doses, and therefore

<sup>927</sup> See, e.g., *How do I dispose of a JUULpod?*, JUUL Labs, Inc., <https://support.juul.com/hc/en-us/articles/360023529793-How-do-I-dispose-of-a-JUULpod-> (last visited Mar. 3, 2020) ("JUULpods should be recycled along with other e-waste."); American Acad. of Pediatrics, *Liquid Nicotine Used in E-Cigarettes Can Kill Children*, [healthychildren.org](https://www.healthychildren.org/english/safety-prevention/at-home/pages/liquid-nicotine-used-in-e-cigarettes-can-kill-children.aspx), <https://www.healthychildren.org/english/safety-prevention/at-home/pages/liquid-nicotine-used-in-e-cigarettes-can-kill-children.aspx> (last visited Mar. 3, 2020).

<sup>928</sup> See, e.g., JUUL Labs, Inc. (2020), <https://support.juul.com/hc/en-us/articles/360023319614-What-kind-of-battery-is-in-the-device-> (last visited Feb. 3, 2020) ("JUUL uses a lithium-ion polymer battery. All portable electronics containing lithium-ion batteries present rare, but potentially serious safety hazards."); JUUL Labs, Inc. (2020), <https://support.juul.com/hc/en-us/articles/360023366194-How-do-I-dispose-of-a-JUUL-device-> (last visited Mar. 13, 2020) ("Unlike other e-cigarettes, JUUL isn't disposable and should be treated as a consumer electronic device. Follow your city's local recommendations for disposing of a lithium-polymer rechargeable battery.").

1 nicotine-contaminated waste requires additional safe-handling procedures.<sup>929</sup> Even “empty” e-cigarette  
 2 products like used JUULpods contain some trace amounts of nicotine. JLI contributed to the improper  
 3 disposal of JUULpods by telling customers to throw JUULpods away in the “regular trash” until at  
 4 least April 27, 2019.<sup>930</sup> In addition, even “disposable” e-cigarettes, which have proliferated in the  
 5 youth vaping market created by Defendants, should not be simply tossed in the trash, as they contain  
 6 the same chemical residues and lithium batteries. The youth e-cigarette epidemic has led to hazardous  
 7 waste from these e-cigarette products throughout Plaintiff’s community, from youth improperly  
 8 disposing of them by littering or throwing them in the trash or from confiscation. Plaintiff has  
 9 struggled to determine how best to respond to this problem.

11 731. The work Plaintiff has done to combat the youth vaping epidemic are important steps,  
 12 but these measures cannot fully address the existing widespread use of vapor products and resulting  
 13 nicotine addiction among youth. Because of the potency of the nicotine salt solution popularized by  
 14 JUUL and the ease of delivery with the new generation of vape devices—allowing kids to take a puff  
 15 as often as every few minutes—widespread vaping has created a problem of addiction much greater  
 16 than that caused by youth cigarette smoking. This in turn creates behavioral as well as health issues  
 17 that are affecting communities and tribal youth. Treatment options are lacking. In addition, youth  
 18 nicotine use is associated with addiction to other substances.

23  
 24 <sup>929</sup> Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing  
 for Nicotine, 84 Fed. Reg. 5816, 5822 (Feb. 22, 2019).

25 <sup>930</sup> JUUL Labs, Inc. (@JUULvapor), Twitter (Jul. 16, 2018),  
 26 <https://twitter.com/juulvapor/status/1018976775676792834?lang=en>; (“JUULpods can be thrown  
 27 away in a regular trash receptacle”) *see also* JUULpod Basics, JUUL Labs, Inc (Apr. 27, 2019),  
 28 [https://web.archive.org/web/20190427023811/https://support.juul.com/home/learn/faqs/juulpod-](https://web.archive.org/web/20190427023811/https://support.juul.com/home/learn/faqs/juulpod-basics)  
 basics (“How do I dispose of a JUULpod?” “JUULpods are closed systems and are not intended to be  
 refilled. They can be thrown away in a regular trash can.”).



1           732. As the researchers conducting the national Monitoring the Future survey wrote in a  
2 letter to the New England Journal of Medicine in October 2019, current efforts are insufficient to  
3 address youth nicotine addiction from vaping:  
4

5           Current efforts by the vaping industry, government agencies, and schools have thus far  
6 proved insufficient to stop the rapid spread of nicotine vaping among adolescents. Of  
7 particular concern are the accompanying increases in the proportions of youth who are  
8 physically addicted to nicotine, an addiction that is very difficult to overcome once  
9 established. The substantial levels of daily vaping suggest the development of nicotine  
10 addiction. New efforts are needed to protect youth from using nicotine during  
11 adolescence, when the developing brain is particularly susceptible to permanent  
12 changes from nicotine use and when almost all nicotine addiction is established.<sup>931</sup>

13           733. While Plaintiff has been working to address the youth vaping crisis, there is much more  
14 that is needed to fully counter Defendants' conduct. For example, with additional resources, the Tribes  
15 could develop a public education campaign about vaping and its harmful effects. Carrying out such a  
16 campaign effectively and countering Defendants' extensive marketing will require significant  
17 funding, as well as staff time. A comprehensive anti-vaping campaign could require subcontracting  
18 with a design firm, conducting focus groups with youth, and paid media including bus ads, movie  
19 theater ads, billboards, and social media.  
20

21           734. Importantly, funding is also needed to create a cohort of trained youth educators. Work  
22 is needed to develop a nicotine-specific, peer-based program to address the harms and widespread use  
23 of vaping nicotine. Peer-to-peer messaging is crucial because it is necessary to change the social norms  
24 around vaping, just as previous efforts ultimately changed social norms around cigarette smoking.  
25 Defendants were adept at using peer-to-peer messaging to promote their addictive products to kids,  
26 through social media campaigns and paid influencers. Countering their conduct will require training  
27 and supporting youth to educate their peers.  
28

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<sup>931</sup> Miech et al., *supra* note 4. **Error! Hyperlink reference not valid.**

1           735. In addition, resources are needed to train professionals who work with youth, including  
2 teachers and service providers, as well as students and tribal youth. Currently, staff are spending time  
3 on prevention and intervention, reducing the amount of time they can devote to other public health  
4 issues. This will continue until the youth vaping epidemic is abated and effective treatment options are  
5 developed.

6  
7           736. The Tribes has only limited resources to address urgent priorities, including efforts to  
8 stem the vaping epidemic. Funding for the Tribes only smoking cessation program, recently rebranded  
9 Quit Nicotine for Tulalip, is a smoking cessation program that receives funding through a program  
10 from casinos. However, these funds can currently only be used to offer smoking cessation for anyone  
11 over the age of 18. The Tribes, in partnership with the Community Health Team, needs funding to  
12 provide addiction treatment and prevention programs specific to youth in crisis, and in addition to e-  
13 cigarettes, as a result of the conduct of each of the Defendants.

14  
15           737. Fully addressing the harms to the Tribal youth caused by the Defendants' conduct will  
16 require a comprehensive approach. Without the resources to fund these measures now and in the  
17 future, the Tribes will continue to be severely harmed by the ongoing consequences of Defendants'  
18 conduct.

19  
20           738. As a direct and proximate result of the conduct of each of the Defendants, and in  
21 particular, their pattern of racketeering activity, the Tribes has been injured in its business and  
22 property.

23 **D. No Federal Agency Action, Including by the FDA, Can Provide the Relief Plaintiff Seeks**  
24 **Here.**

25           739. The injuries Plaintiff has suffered and will continue to suffer cannot be addressed by  
26 agency or regulatory action. There are no rules the FDA could make or actions the agency could take  
27 that would provide Plaintiff the relief it seeks in this litigation.



1           746. Specifically, a “[n]uisance consists in unlawfully doing an act, or omitting to perform a  
2 duty, which act or omission either annoys, injures or endangers the comfort, repose, health or safety of  
3 others, offends decency . . . or in any way renders other persons insecure in life, or in the use of  
4 property.” RCW 7.48.120.

5           747. Under Washington law, conduct that substantially and/or unreasonably interferes with  
6 the Plaintiff’s use of its property is a nuisance even if it would otherwise be lawful.

7           748. Pursuant to RCW 7.48.130, “A public nuisance is one which affects equally the rights  
8 of an entire community or neighborhood, although the extent of the damage may be unequal.”

9           749. Tulalip Tribes and its residents have a right to be free from conduct that endangers their  
10 health and safety. Yet Defendants have engaged in conduct which endangers or injures the health and  
11 safety of the residents of the Tribes by their production, promotion, distribution, and marketing of JUUL  
12 products for use by minors in Tulalip Tribes and in a manner that substantially interferes with the  
13 functions and operations of Tulalip Tribes and impacts the public health, safety, and welfare of the  
14 entire Tulalip Tribes community.

15           750. Defendants have created or assisted in the creation of a condition that is injurious to the  
16 health and safety of Plaintiff and its youth and employees and interferes with the comfortable enjoyment  
17 of life and property of the entire communities of Tulalip Tribes and Washington State at large.

18           751. Defendants’ conduct has directly caused a severe disruption of the public health, order,  
19 and safety. Defendants’ conduct is ongoing and continues to produce permanent and long-lasting  
20 damage.

21           752. This harm to the Plaintiff outweighs any social utility of the Defendants’ wrongful  
22 conduct because Defendants’ conduct violates Washington’s public policy against marketing vapor  
23 products like JUUL to minors. This policy is expressed through Washington State Governor Jay Inslee’s  
24 Executive Order 19-03, finding that “it is the policy of the state of Washington to support the health,  
25  
26  
27  
28

1 safety, and well-being of all Washingtonians” and that “e-cigarette use among youth has reached  
 2 epidemic proportions and that this epidemic presents a clear and present danger.” This policy is also  
 3 expressed through statutes and regulations, including but not limiting to

4 A. RCW 26.28.080, under which any person who sells, gives, or permits to be sold  
 5 or given vapor products to a minor is guilty of a gross misdemeanor;

6 B. RCW 70.345.140, under which it is illegal for minors to purchase vapor  
 7 products

8 C. RCW 70.345.090, under which it is illegal for any person to conduct a delivery  
 9 sale or otherwise ship or transport, or cause to be shipped or transported, any vapor  
 10 product ordered or purchased by mail or through the internet to a minor

11 753. Defendants’ conduct violated this public policy, including by

12 A. Actively seeking to enter school campuses, targeting children as young as eight  
 13 through summer camps and school programs, extensively targeting youth through social  
 14 media campaigns, and recruiting “influencers” to market to teens;

15 B. Engaging in marketing tactics specifically designed to mislead children and  
 16 youth and to ensnare minors into nicotine addiction, including by explicitly adopting  
 17 tactics prohibited from Big Tobacco, with the knowledge that those tactics were likely to  
 18 ensnare children and youth into nicotine addiction, including using billboards and  
 19 outdoor advertising, sponsoring events, giving free samples, paying affiliates and  
 20 “influencers” to push JUUL products on JUUL’s behalf, and by selling JUUL in flavors  
 21 designed to appeal to youth;

22 C. Engaging in advertising modeled on cigarette ads and featuring youthful-  
 23 appearing models and designing advertising in a patently youth-oriented fashion;

24 D. Directing advertising to youth media outlets and media designed to appeal to  
 25 children and youth, such as Instagram and other social media channels;

26 E. Hosting youth-focused parties across the United States, at which free JUUL  
 27 samples were dispensed and in which vaping was featured prominently across JUUL-  
 28 sponsored social media;

F. Formulating JUULpods with flavors with the knowledge that such flavors  
 appealed to youth and with the intent that youth become addicted or dependent upon  
 JUUL products; and

G. Promoting and assisting the growth of the JUUL market and its availability with  
 knowledge that JUUL products were being purchased and used by large numbers of  
 youth.

1           754. The health and safety of the youth of Tulalip Tribes, including those who use, have used,  
2 or will use JUUL products, as well as those affected by others' use of JUUL products, are matters of  
3 substantial public interest and of legitimate concern to the Plaintiff, as well as to the entire Washington  
4 State community.

5           755. Defendants' conduct has affected and continues to affect a substantial number of people  
6 within the land of the Tulalip Tribes and is likely to continue causing significant harm.

7           756. But for Defendants' actions, JUUL use by minors would not be as widespread as it is  
8 today, and the youth vaping public health epidemic that currently exists as a result of the Defendants'  
9 conduct would have been averted.

10           757. Logic, common sense, justice, policy, and precedent indicate Defendants' unfair and  
11 deceptive conduct has caused the damage and harm complained of herein. Defendants knew or  
12 reasonably should have known that their statements regarding the risks and benefits of JUUL were false  
13 and misleading, that its marketing methods were designed to appeal to minors, and that its false and  
14 misleading statements, marketing to minors, and active efforts to increase the accessibility of JUUL  
15 products and grow JUUL's market share were causing harm to minors and to counties, including minors  
16 in Tulalip Tribes and the Tribes itself. Thus, the public nuisance caused by Defendants was reasonably  
17 foreseeable, including the financial and economic losses incurred by Tulalip Tribes.

18           758. Alternatively, Defendants' conduct was a substantial factor in bringing about the public  
19 nuisance even if a similar result would have occurred without it. By directly marketing to youth and  
20 continuing marketing practices after it was evidence that children were using JUUL products in large  
21 numbers and were specifically using these products in school, JUUL directly facilitated the spread of  
22 the youth vaping epidemic and the public nuisance effecting Tulalip Tribes. By investing billions of  
23 dollars in JUUL and actively working to promote the sale and spread of JUUL products with knowledge  
24 of JUUL's practice of marketing its products to youth and failure to control youth access to its products,

1 Altria directly facilitated the spread of the youth vaping epidemic and the public nuisance effecting  
2 Tulalip Tribes.

3 759. In addition, engaging in any business in defiance of a law regulating or prohibiting the  
4 same is a nuisance per se under Washington law. Defendants' conduct described herein of deceptively  
5 marketing JUUL products to minors violates RCW 7.48.010 and therefore constitutes a nuisance per  
6 se.  
7

8 760. Defendants' conduct is especially injurious to Tulalip Tribes because, as a direct and  
9 proximate cause of Defendants' conduct creating or assisting in the creation of a public nuisance,  
10 Plaintiff and its residents have sustained and will continue to sustain substantial injuries.

11 761. Plaintiff has taken steps to address the harm caused by Defendants' conduct, as described  
12 above.  
13

14 762. Fully abating the epidemic of youth vaping resulting from Defendants' conduct will  
15 require much more than these steps.

16 763. Tulalip Tribes request an order providing for abatement of the public nuisance that  
17 Defendants have created or assisted in the creation of, and enjoining Defendants from future violations  
18 of RCW 7.48.010.

19 764. Pursuant to RCW 7.48.020, Plaintiff also seeks the maximum statutory and civil  
20 penalties permitted by law, including actual and compensatory damages, as a result of the public  
21 nuisance created by Defendants.  
22

23 765. Pursuant to RCW 4.22.070, Defendants are jointly and severally liable because they  
24 have acted in concert with each other and because Plaintiff is not at fault.  
25  
26  
27



**COUNT TWO — VIOLATIONS OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT (“RICO”)**

**1. Violation of 18 U.S.C. § 1962(c)**

766. Plaintiff incorporates the allegations set forth above as if fully set forth herein.

767. This claim is brought by Plaintiff against Defendants Monsees, Bowen, Pritzker, Huh, Valani, and Altria (the “RICO Defendants”) for actual damages, treble damages, and equitable relief under 18 U.S.C. § 1964, for violations of 18 U.S.C. § 1961, et seq.

768. Section 1962(c) makes it “unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity . . . .” 18 U.S.C. § 1962(c).

769. At all relevant times, each RICO Defendant is and has been a “person” within the meaning of 18 U.S.C. § 1961(3), because they are capable of holding, and do hold, “a legal or beneficial interest in property.”

770. Each RICO Defendant conducted the affairs of an enterprise through a pattern of racketeering activity, in violation of 18 U.S.C. § 1962(c), as described herein.

771. Plaintiff is a “person,” as that term is defined in 18 U.S.C. § 1961(3), and have standing to sue under 18 U.S.C. § 1964(c) as they were and are injured in their business and/or property “by reason of” the RICO Act violations described herein.

772. Plaintiff demands the applicable relief set forth in the Prayer for Relief below.

**a. JLI is an Enterprise Engaged in, or its Activities Affect, Interstate or Foreign Commerce**

773. Section 1961(4) defines an enterprise as “any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.” 18 U.S.C. § 1961(4).

1           774. JUUL Labs, Inc. (“JLI”) is a corporation and therefore meets the definition of  
 2 “enterprise” under the RICO Act. Specifically, JLI is registered as a corporate entity in the State of  
 3 Delaware.

4           775. Each of Defendants Pritzker, Huh, Valani, Bowen, and Monsees controlled the JLI  
 5 Enterprise—that is, they used JLI as the vehicle through which an unlawful pattern of racketeering  
 6 activity was committed—through their roles as officers and directors of JLI. As set forth below, their  
 7 roles allowed them to control the resources and instrumentalities of JLI and use that control to  
 8 perpetrate a number of fraudulent schemes involving the use of mail and wires, including sales to  
 9 youth and fraudulently misrepresenting or omitting the truth about JUUL products to adult users and  
 10 the public at large. For its part, Altria and Altria Client Services began conspiring with Defendants  
 11 Pritzker and Valani to direct the affairs of JLI as early as Spring 2017, messaging that if JLI continued  
 12 its massive growth—which they knew was achieved through youth marketing and fraudulent  
 13 misrepresentations and omissions—they would receive a massive personal pay-off. The Altria  
 14 Defendants started personally transmitting statements over the mail and wires in furtherance of the  
 15 fraudulent schemes even before Altria’s December 2018 investment in JLI. After that point, Altria  
 16 gained even further influence over the JLI Board of Directors and installed its own personnel in key  
 17 roles at JLI, cementing its direction of the Enterprise.  
 18  
 19  
 20

21           776. JLI is an enterprise that is engaged in and affects interstate commerce because the  
 22 company has sold and continues to sell products across the United States, as alleged herein.

23                   **b. “Conduct or Participate, Directly or Indirectly, in the Conduct of Such**  
 24                   **Enterprise’s Affairs”**

25           777. “[T]o conduct or participate, directly or indirectly, in the conduct” of an enterprise, “one  
 26 must participate in the operation or management of the enterprise itself.” *Reves v. Ernst & Young*, 507  
 27 U.S. 170, 185 (1993).

1        778. As described herein, each RICO Defendant participated in the operation or management  
 2 of the JLI Enterprise, and directed the affairs of the JLI Enterprise through a pattern of racketeering  
 3 activity, including masterminding schemes to defraud that were carried out by and through JLI using  
 4 the mail and wires in furtherance of plans that were designed with specific intent to defraud.

5  
 6        **Bowen and Monsees Founded the JLI Enterprise and Started its Mission of Hooking  
 Kids and Lying to the Public and Regulators**

7        779. Plaintiff incorporates by reference, as if fully set forth herein, the factual allegations  
 8 stated against Defendants Bowen and Monsees above.

9  
 10        780. As described above in more detail, Defendants Bowen and Monsees were the  
 11 visionaries behind JUUL, led JLI in its infancy to develop a highly addictive product, and formed JLI  
 12 with the aim of creating a growing base of loyal users, including an illicit youth market of nicotine  
 13 users, by following the same tactics that the cigarette industry has used for decades: selling to kids and  
 14 lying to adults about their products. Together, Bowen and Monsees set out to “deliver solutions that  
 15 refresh the magic and luxury of the tobacco category.”<sup>932</sup>

16  
 17        781. Monsees admitted that when creating JLI, he and Bowen carefully studied the  
 18 marketing strategies, advertisements, and product design revealed in cigarette industry documents that  
 19 were uncovered through litigation and made public under the November 1998 Master Settlement  
 20 Agreement between the state Attorneys General of forty-six states, five U.S. territories, the District of  
 21 Columbia, and the four largest cigarette manufacturers in the United States. “[Cigarette industry  
 22 documents] became a very intriguing space for us to investigate because we had so much information  
 23  
 24  
 25  
 26

27        <sup>932</sup> Josh Mings, *Ploom Model Two Slays Smoking With Slick Design and Heated Tobacco Pods*, SOLID  
 28 SMACK (Apr. 23, 2014), [www.solidsmack.com/design/ploom-modeltwo-slick-design-tobacco-pods](http://www.solidsmack.com/design/ploom-modeltwo-slick-design-tobacco-pods).

1 that you wouldn't normally be able to get in most industries. And we were able to catch up, right, to a  
2 huge, huge industry in no time. And then we started building prototypes.”<sup>933</sup>

3 782. Seizing on the decline in cigarette consumption and the lax regulatory environment for  
4 e-cigarettes, Bowen, Monsees, and investors in their company sought to introduce nicotine to a whole  
5 new generation of youth users, with JLI as the dominant supplier, by concealing the nicotine content  
6 and addictiveness of the products, and promoting these products to youth users. To achieve that goal,  
7 they knew they would need to create and market a product that would make nicotine cool to kids again,  
8 without the stigma associated with cigarettes, deceive the public about what they were doing, and  
9 prevent and delay regulation that would hinder their efforts to expand JUUL sales.  
10

11 783. Bowen led the design of the JUUL product, including by participating as a subject in  
12 many of the company's human studies. Bowen was instrumental in making the JUUL product  
13 appealing to youth, even though “he was aware early on of the risks e-cigarettes posed to teenagers.”  
14 He drew on his experience as a design engineer at Apple to make JUUL resonate with Apple's popular  
15 aesthetics. This high-tech style made JUULs look “more like a cool gadget and less like a drug  
16 delivery device. This wasn't smoking or vaping, this was JUULing.”<sup>934</sup> The evocation of technology  
17 makes JUUL familiar and desirable to the younger tech-savvy generation, particularly teenagers.  
18 According to a 19-year-old interviewed for the Vox series By Design, “our grandmas have iPhones  
19 now, normal kids have JUULs now. Because it looks so modern, we kind of trust modern stuff a little  
20 bit more so we're like, we can use it, we're not going to have any trouble with it because you can trust  
21 it.”<sup>935</sup>  
22  
23  
24

25 <sup>933</sup> Gabriel Montoya, *Pax Labs: Origins with James Monsees*, SOCIAL UNDERGROUND,  
26 <https://socialunderground.com/2015/01/pax-ploom-origins-future-james-monsees/>.

27 <sup>934</sup> *How JUUL Made Nicotine Go Viral*, VOX (Aug. 10, 2018),  
<https://www.youtube.com/watch?v=AF0poKBUyok>.

28 <sup>935</sup> *Id.*

1           784. Bowen designed JUUL products to foster and sustain addiction, not break it. JLI and  
2 Bowen were the first to design an e-cigarette that could compete with combustible cigarettes on the  
3 speed and strength of nicotine delivery. Indeed, JUUL products use nicotine formulas and delivery  
4 methods much stronger than combustible cigarettes, confirming that what Bowen created an initiation  
5 product, not a cessation or cigarette replacement product. Bowen also innovated by making an e-  
6 cigarette that was smooth and easy to inhale, practically eliminating the harsh “throat hit,” which  
7 otherwise deters nicotine consumption, especially among nicotine “learners,” as R.J. Reynolds’  
8 chemist Claude Teague called new addicts, primarily young people.

9  
10           785. Bowen worked to minimize “throat hit” and maximize “buzz” of the JUUL e-cigarette.  
11 Dramatically reducing the throat hit is not necessary for a product that is aimed at smokers, who are  
12 accustomed to the harshness of cigarette smoke, but it very effectively appeals to nonsmokers,  
13 especially youth.

14  
15           786. The “buzz” testing results demonstrate that Bowen’s goal was not to match the nicotine  
16 delivery profile of a cigarette, but to surpass it by designing a maximally addictive product, which  
17 could only be marketed as a cigarette substitute through a sophisticated fraud campaign.

18           787. Bowen designed the JUUL product to deliver nicotine in larger amounts and at a faster  
19 rate than traditional cigarettes. This feature made the product more likely to capture users with the first  
20 hit.

21  
22           788. Bowen was also heavily involved with JLI’s marketing strategy, which primarily  
23 targeted youth users.

24           789. Bowen personally developed JLI’s strategy to market to youth and make JLI as  
25 profitable as possible, so that it would be an attractive investment for a major manufacturer of  
26 traditional cigarettes. In a 2016 e-mail exchange with JLI employees regarding potential partnerships  
27 with e-cigarette juice manufacturers, Bowen reminded the employees that “big tobacco is used to

1 paying high multiples for brands and market share.”<sup>936</sup> Bowen knew that to achieve the ultimate goal  
 2 of acquisition, JLI would have to grow the market share of nicotine-addicted e-cigarette users,  
 3 regardless of the human cost.

4 790. Bowen’s role in marketing included changing the name of “Crisp Mint” to “Cool Mint”  
 5 in 2015. Bowen also oversaw JLI’s formation of a commercial relationship with Avail Vapor, LLC, an  
 6 Altria subsidiary, which Altria and JLI used to coordinate the flavor preservation schemes described  
 7 below.  
 8

9 791. Like Bowen, Monsees was instrumental to founding JLI with the aim of expanding the  
 10 market of nicotine addicted e-cigarette users to include those “who aren’t perfectly aligned with  
 11 traditional tobacco products.”<sup>937</sup>  
 12

13 792. Monsees personally helped to market JLI to the “cool kids,” using a sophisticated viral  
 14 marketing campaign that strategically laced social media with false and misleading messages, to ensure  
 15 their uptake and distribution among young users. Then, he subsequently and personally denied to the  
 16 public and regulators that JLI had done just that.

17 793. With help from their early investors and board members, who include Nicholas Pritzker,  
 18 Hoyoung Huh, and Riaz Valani, Bowen and Monsees succeeded in hooking millions of youth,  
 19 intercepting millions of adults trying to overcome their nicotine addictions, delaying regulation that  
 20 would have stopped their unlawful activities, and, of course, earning billions of dollars in profits.  
 21

22 **Pritzker, Huh, and Valani Exercised Control and Direction Over the JLI Enterprise**

23 794. Plaintiff incorporates by reference, as if fully set forth herein, the factual allegations  
 24 stated against Pritzker, Huh, and Valani above. As described above, Pritzker, Huh, and Valani were  
 25 early investors in JLI who worked closely with Monsees and Bowen, and took control of the JLI Board  
 26

27 <sup>936</sup> INREJUUL\_00294198.

28 <sup>937</sup> *Id.*

1 of Directors in 2015. Working in close collaboration with Monsees and Bowen, Pritzker, Huh, and  
2 Valani directed JLI's affairs and used the corporation to effectuate and continue fraudulent schemes for  
3 their own personal profits and financial benefits. Pritzker, Huh, and Valani were "more active than  
4 most" board members and, unlike most corporate board members, had active involvement in directing  
5 the company's actions week-to-week, including JLI's marketing efforts.  
6

7 795. Pritzker, Huh, and Valani exercised an intimate level of control over JLI during a key  
8 period—from October 2015 through at least May 2016—when the three Defendants (Pritzker, Huh,  
9 and Valani) served as the Executive Committee of the JLI Board of Directors.

10 796. As detailed above, in 2015, there was a power struggle within JLI about whether to  
11 grow JLI's consumer base by targeting young people. Pritzker, Huh, and Valani favored aggressive  
12 marketing of JUUL products to young people. By October 2015, the power struggle was over, with the  
13 debate resolved in favor of selling to teens. At that time, Monsees stepped down as CEO to be replaced  
14 by the three-member "Executive Committee" comprised of Pritzker, Huh, and Valani. Huh served as  
15 the Executive Committee Chairman, and Pritzker served as Co-Chairman. The Executive Committee  
16 had the final say over all day-to-day operations of the JLI business. Huh, as Chairman, and Pritzker, as  
17 Co-Chairman of JLI, were involved in the management of the company on a weekly basis. By  
18 December 2015, for example, the Executive Committee gave Pritzker and Huh supervisory  
19 responsibility for JLI employees. Valani, for his part, was also an active Board member, involved in  
20 the management of the company on a weekly basis. Dating back to 2011, Valani was a regular  
21 presence in JLI's offices, appearing in person at JLI's offices "a couple times a week."<sup>938</sup>  
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27 <sup>938</sup> [https://www.vice.com/en/article/43kmwm/juul-founders-first-marketing-boss-told-us-the-vape-](https://www.vice.com/en/article/43kmwm/juul-founders-first-marketing-boss-told-us-the-vape-giants-strange-messy-origins)  
28 [giants-strange-messy-origins](https://www.vice.com/en/article/43kmwm/juul-founders-first-marketing-boss-told-us-the-vape-giants-strange-messy-origins)



**Bowen, Monsees, Pritzker, Huh and Valani Exercised a Firm Grip over JLI**

797. By the summer of 2015, and at all times prior to Altria's investment in JLI, JLI was controlled by a Board of Directors with a maximum of seven seats. JLI co-founder Bowen has occupied a seat on JLI's Board from its inception. Likewise, Defendant Monsees was a member of the Board of Directors of JLI until he stepped down in March 2020. Defendant Pritzker has been on the Board of Directors of JLI since at least August 2013. He controlled two of JLI's seven maximum Board seats. Defendant Valani has been on JLI's Board of Directors since at least 2007. He also controlled two of JLI's maximum seven Board seats. Beginning around March 2015, Hank Handelsman occupied Valani's second seat. Notably, Handelsman has a close relationship with Pritzker, as he serves as general counsel for the Pritzker Organization. He also was a senior executive officer and general counsel for the Pritzker's Hyatt Corporation for several decades.

798. Collectively, and prior to Altria's investment, Pritzker, Valani, Huh, Bowen, and Monsees controlled at least six of the seven seats on the JLI Board of Directors, which in turn allowed them to appoint the seventh member of the JLI Board of Directors. Thus, the Management Defendants had total control of the decisions of the Board of Directors. Pritzker and Valani, each holding two Board seats (and thus a majority of the seven-seat Board), had the ability to control the outcome of all decisions of the Board of Directors, as Board decisions were decided by a majority vote. It also follows that, by controlling the majority of the JLI Board of Directors at all relevant times, Pritzker and Valani had an effective "veto" over any decisions made by the JLI Board of Directors. And, Pritzker, Huh, and Valani exercised even more close control during the time period in which they served on the Executive Committee.

799. Through the Board of Directors' control over all aspects of JLI's business, Bowen, Monsees, Pritzker, Huh, and Valani used JLI as a vehicle to further fraudulent schemes of targeting youth, misrepresenting and omitting to users of all ages what JLI was really selling and to whom, and

1 seeking to delay or prevent regulation that would impede the exponential growth of JUUL's massive  
2 youth market share. They achieved their ultimate goal of self-enrichment through fraud when Altria  
3 made an equity investment in JLI in December 2018.

4 **In 2017, Altria Conspired with Pritzker and Valani to Influence and Indirectly**  
5 **Exercise Control Over JLI.**

6 800. Plaintiff incorporates by reference, as if fully set forth herein, the factual allegations  
7 stated against the Altria Defendants above. As set forth above, Altria (through its subsidiary,  
8 Defendant Philip Morris) has been manufacturing and selling "combustible" cigarettes for more than a  
9 century, but, recognizing that regulation and litigation had resulted in declining cigarette sales, Altria  
10 was looking to enter the e-cigarette space. It formed a subsidiary, Nu Mark LLC, to develop and  
11 market an e-cigarette product, the Mark Ten. The Mark Ten was not a success, so Altria began eyeing  
12 an acquisition of the biggest player in the youth addiction game, JLI.  
13

14 801. Altria's pursuit led to eighteen months of negotiations with Altria and Altria Client  
15 Services on the one hand, and Defendants Pritzker and Valani on the other, regarding a potential  
16 acquisition or equity investment in JLI. They conspired to achieve the best outcome for Pritzker and  
17 Valani personally, and for Altria as an entity. During these eighteen months, Altria, and Altria Client  
18 Services specifically, enticed Pritzker and Valani with a potential multi-billion-dollar payout. During  
19 that time, Pritzker, Valani, and the other Management Defendants committed numerous acts of fraud to  
20 grow the business of JLI to satisfy Altria's expectations. Meanwhile, Altria and Altria Client Services  
21 actively conspired with Pritzker and Valani to continue growing JLI's youth market by continuing  
22 JLI's fraudulent activities, their compliance ensured by that promised payout. Altria was gathering  
23 information on JLI to confirm Altria would be purchasing a company with a proven track record of  
24 sales to youths.  
25  
26  
27

**Altria Directly Exercises Control and Participates in of the JLI Enterprise**

802. By October 2018, Altria was directly transmitting statements over the mail and wires to support the JLI enterprise's efforts to fraudulently market JUUL products and to prevent or delay regulation.

803. In December 2018, Altria publicly announced its ties to the JLI enterprise by making a \$12.8 billion equity investment in JLI, the largest private equity investment in United States history. This investment led to massive personal financial benefit for each of the Management Defendants and gave Altria three seats on the JLI Board of Directors, allowing it to assert greater management and control over the JLI Enterprise, which used the instrumentalities of JLI to effectuate many of its fraudulent schemes.

804. Following the investment, Altria also directly distributed fraudulent statements that JLI was a cessation device, that JLI did not target youth, and that the nicotine in a single JUUL pod was equivalent to a pack of cigarettes.

805. Moreover, to further bolster its influence and control of JLI, Altria worked with Pritzker and Valani to install two key Altria executives into leadership positions at JLI: K.C. Crosthwaite and Joe Murillo.

**The Fraudulent Schemes**

806. As detailed above, the operation of the JLI Enterprise, as directed by the five individual Defendants and Altria, included several schemes to defraud that helped to further the goals of the RICO Defendants—i.e., to expand the e-cigarette market, particularly among youth, for the five individual Defendants to reap huge personal profits, and for Altria to regain the market share that it was losing in the traditional cigarette arena and could no longer openly pursue through the same tactics used by JLI and the five individual Defendants.

## Fraudulent Marketing Scheme

807. As described above and in Sections IV.D, IV.E, JLI, and Defendants Bowen, Monsees, Pritzker, Huh, and Valani directed and caused JLI to make false and misleading advertisements that omitted references to JUUL’s nicotine content and potency to be transmitted via the mail and wires, including the Vaporized campaign.

808. As early as 2014, Pritzker participated in planning discussions with Monsees and Valani about how to expand JUUL’s market share through marketing.

809. In 2015, Bowen helped to finalize the messaging framework for JUUL’s launch plan, including sponsored content on social media. This messaging was patently youth oriented and intentionally targeted children.

810. Monsees studied the marketing techniques of the traditional cigarette industry, and he personally reviewed the photographs that were used in the youth-oriented advertisements that accompanied JUUL’s launch. The “Vaporized” campaign featured bright colors and young models who were in “poses were often evocative of behaviors more characteristic of underage teen than mature adults.”<sup>939</sup>

811. Monsees also provided specific direction as to the content of the JUUL website to JLI employees, and that content include false, misleading, and deceptive statements designed to induce users, and particularly young people, to purchase the JUUL product.

812. Pritzker, Valani, Monsees, and Bowen—individually and collectively—approved images from the JUUL “Vaporized” ad campaign in 2015. While they noted the youthfulness of the

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<sup>939</sup> *Examining Juul’s Role in the Youth Nicotine Epidemic, Hearing Before the H. Comm. on Oversight and Reform, Subcomm. on Econ. and Consumer Policy*, 116th Cong. (2019) (statement of Robert K Jackler, Professor, Stanford University).  
<https://docs.house.gov/meetings/GO/GO05/20190724/109844/HHRG-116-GO05-Wstate-JacklerR-20190724.pdf>.

1 models, they expressed no concerns about the direction of the campaign, which was clearly directed to  
2 young users, they all supported launching the campaign—which then proved to be a great “success” in  
3 expanding vaping among underage users. And even though Pritzker, Huh, and Valani knew—and  
4 explicitly stated—that what they were doing was wrong, JLI pressed ahead with its youth-oriented  
5 marketing through early 2016.  
6

7 813. Before the launch of new JUUL advertising campaigns in 2015, Pritzker, Valani, and  
8 Bowen advised the JLI marketing team to allay their concerns about the messaging regarding the  
9 nicotine content of the JUUL product.

10 814. Along with Valani, Pritzker was so directly involved in the “Vaporized” advertising  
11 campaign—which, as described above, marketed the JUUL product to teens—that JLI’s COO in 2015  
12 remarked that he was concerned that the Board would try to write copy for future branding changes.  
13

14 815. Huh was also instrumental in these early marketing campaigns, which were targeted to  
15 youth and omitted references to JUUL’s nicotine content. In debates about whether to continue  
16 marketing JUUL aggressively to youth, Huh supported that action and asserted that the company could  
17 not be blamed for youth nicotine addiction.

18 816. During his stint as Executive Committee chairman, which lasted at least until May  
19 2016, Huh approved specific branding changes in 2015 and 2016, as JLI developed and implemented  
20 its plans for marketing to youth.  
21

22 817. Various communications post-October 2015 demonstrate that Monsees deferred to Huh  
23 with regard to the direction of the company.

24 818. Pritzker also personally controlled several aspects of JLI’s branding. For instance,  
25 Pritzker was directly involved in creating JLI’s corporate website in May 2017. JLI used this website  
26 as another means to market its products to youth.  
27

1           819. Through the allegations above, Plaintiff has shown a direct connection between the  
2 RICO Defendants and this fraudulent scheme, including personal involvement in directing, in some  
3 part, the affairs of the JLI Enterprise.

4 **Youth Access Scheme**

5           820. As described above and in Section IV.E, the five Management Defendants who  
6 controlled JLI acted individually and in concert to expand youth access to JUUL products through  
7 schemes to mislead customers about the products.

8           821. As reflected in Section IV.E.11, JLI worked with Veratad to expand youth access while  
9 giving the appearance the JLI was combating youth access to its products.

10           822. Through the allegations above, Plaintiff has shown a direct connection between the  
11 RICO Defendants and this fraudulent scheme, including personal involvement in directing, in some  
12 part, the affairs of the JLI Enterprise.

13 **Nicotine Content Misrepresentation Scheme**

14           823. As described above and in Section IV.D, IV.G, the five Management Defendants and  
15 Altria caused thousands, if not millions, of JUULpod packages to be distributed to users with false and  
16 misleading information regarding the JUUL pods' nicotine content. The five individual Defendants  
17 who controlled JLI also caused the same false and misleading information to be distributed via JLI's  
18 website.

19           824. Defendant Bowen participated in studies regarding the nicotine content of JUUL pods,  
20 including by altering or re-engineering his own studies concerning nicotine content to mask the true  
21 content and impact in the products he developed. He discussed his engineering test results (the Phase 1  
22 results), and how they differed from the Phase 0 results, with Monsees, Pritzker and Valani. He helped  
23 to select the 4% benzoate formulation that served as a model for all formulations used with the JUUL  
24  
25  
26  
27

1 product. As formulated, JUUL pods were foreseeably exceptionally addictive, particularly when used  
2 by persons without prior exposure to nicotine.

3 825. As alleged above, Defendants Monsees, Pritzker, and Valani had personal knowledge  
4 about JUUL product nicotine content through direct communications with Bowen discussing  
5 engineered test results (the Phase 1 results), and how they differed from the Phase 0 results.  
6

7 826. Defendants Bowen, Monsees, Pritzker and Valani thus caused the distribution of  
8 numerous JUUL pod packages, and statements on the JLI website and elsewhere, that fraudulently  
9 equated the nicotine content of one JUUL pod as equivalent to one pack of cigarettes. These statements  
10 were false, as a JUUL pod had substantially more nicotine than a standard pack of combustible  
11 cigarettes.  
12

13 827. Defendant Bowen also directed, on May 4, 2018, that Ashley Gould convey to the  
14 Washington Post that JLI's studies "support that nic strength and pack equivalence holds true," even  
15 though he knew this statement was false. On May 10, 2018, the Washington Post published an article,  
16 quoting a JUUL spokesperson extensively and stating that JUUL "contains about the same amount of  
17 nicotine as a pack of cigarettes"—the exact false statement Bowen instructed Gould to convey to the  
18 Post.  
19

20 828. The following year, Monsees conveyed this same misinformation in deposition  
21 testimony in a proceeding before the United States International Trade Commission.

22 829. Defendant Monsees also required, by no later than July 2018, that JLI employees obtain  
23 his personal approval for the artwork on all JUUL pod packaging.

24 830. Several Altria Defendants were involved in this scheme as well. With the approval and  
25 consent of Altria Group and under the management of Altria Client Services (the "Provider Manager"  
26 for the contracts), Altria Group Distribution Company distributed millions of JUULpod packages to  
27



1 stores across the country. These packages included the false and misleading information regarding  
2 JUUL pods' nicotine content.

3 831. Through the allegations above, Plaintiff has shown a direct connection between the  
4 RICO Defendants and this fraudulent scheme, including personal involvement in directing, in some  
5 part, the affairs of the JLI Enterprise.  
6

7 **Flavor Preservation Scheme**

8 832. As described above and in Section IV.I, the RICO Defendants worked in concert to  
9 defraud the public and deceive regulators to prevent regulation that would have impeded their plan to  
10 keep selling to children. Specifically, they worked to ensure that the FDA allowed JUUL's mint flavor  
11 to remain on the market.

12 833. Altria and JLI had been working together on flavor strategy as early as September 2017,  
13 when Tyler Goldman and Gal Cohen (Valani's inside man within JLI) met with representatives of  
14 Altria Client Services to plan a strategy for responding to the FDA's proposed regulation of flavors in  
15 e-cigarettes. This plan would be coordinated through Avail Vapor, LLC, a company partially owned by  
16 Altria. Through Avail, the RICO Defendants obtained evidence that confirmed that mint was so  
17 popular with non-smoking teenagers that even with mint as its sole flavor option, JLI would remain a  
18 multi-billion-dollar enterprise.  
19

20 834. Weeks before Altria's equity investment in December 2018, the regulatory pressure  
21 ramped up significantly, and Altria and JLI engaged in active fraud to lull the FDA that mint was  
22 simply a traditional cigarette flavor designed to help adult smokers switch, rather than a flavor that  
23 appealed primarily to youth. With the scheme in place, Altria and JLI finalized their deal.  
24  
25  
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27

1           835. In September 25, 2018, then-FDA Commissioner Scott Gottlieb sent letters to Altria,  
2 JLI and other e-cigarette manufacturers, requesting a “detailed plan, including specific timeframes, to  
3 address and mitigate widespread use by minors.”<sup>940</sup>

4           836. Altria and JLI’s responses to the FDA reflect a coordinated effort to mislead the FDA  
5 with the intention that regulators, in reliance on their statements, would allow JLI to continue  
6 marketing mint JUUL pods.<sup>941</sup>

7           837. On October 25, 2018, Altria Group sent a letter to the FDA portraying mint as a  
8 traditional tobacco flavor. Altria shared this letter with Pritzker and Valani. JLI, at the direction of the  
9 five Management Defendants, subsequently sent a similar letter and false youth study, fraudulently  
10 claiming that mint was a traditional tobacco flavor and was not attractive to kids.

11           838. Altria Group Distribution Company and Altria Group (through K.C. Crosthwaite) then  
12 distributed hundreds of thousands of mint pods in 2019. They focused on selling this flavor in  
13 particular to take advantage of delayed regulation.

14           839. Through the allegations above, Plaintiff has shown a direct connection between the  
15 RICO Defendants and this fraudulent scheme, including personal involvement in directing, in some  
16 part, the affairs of the JLI Enterprise.

### 17 **Cover-up Scheme**

18           840. The RICO Defendants were not only concerned with protecting flavors, however. In  
19 light of growing public scrutiny of JLI’s role in the youth vaping crisis, these Defendants continued  
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21  
22  
23  
24

25 <sup>940</sup> Letter from Scott Gottlieb, M.D. to JUUL Labs, Inc. (Sept. 12, 2018); Letter from Scott Gottlieb,  
26 M.D. to Altria Group Inc. (Sept. 12, 2018).

27 <sup>941</sup> See *United States v. Jones*, 712 F.2d 1316, 1320-21 (9th Cir. 1983) (“It is enough that the mails be  
28 used as part of a ‘lulling’ scheme by reassuring the victim that all is well and discouraging him from  
investigating and uncovering the fraud.”).

1 their scheme to prevent a complete ban on JLI's product by portraying JUUL as a smoking cessation  
2 device and denying that the company ever marketed to youth.

3 841. As described above and in Sections IV.D, IV.E, JLI maintained website pages that  
4 provided false information about the addictive potential of its products and denied that JLI marketed to  
5 youth. Defendants Bowen, Monsees, Pritzker, Huh, and Valani directed the content of the JLI website  
6 and had "final say" over JLI's marketing messaging.

7  
8 842. Bowen understood that children were using the JUUL product and intentionally  
9 continued the youth-appealing marketing strategy. For instance, in 2016, upon seeing social media  
10 posts of teenagers using JUUL products, he remarked that he was "astounded by this 'ad campaign'  
11 that apparently some rich east coast boarding school kids are putting on," and he added that Valani was  
12 plotting how JUUL could "leverage user generated content" to increase sales.

13  
14 843. Monsees knew before the JUUL launch that JUUL would be attractive to youth. In  
15 October 2014, Monsees received results from a JUUL prototype, including comments that while JUUL  
16 was "too much" for smokers, the "younger group" liked JUUL, and JUUL "might manage to make  
17 smoking cool again." Monsees saw this information as an opportunity, not as a warning.

18 844. Bowen and Monsees were well aware that JUUL branding was oriented toward teens,  
19 and they mimicked the previous efforts of the tobacco industry to hook children on nicotine, to  
20 increase JUUL sales.

21  
22 845. In 2015, JLI's Board—controlled by Bowen, Monsees, Pritzker, Huh, and Valani—met  
23 frequently, and the appeal of JUUL to underage users was a constant topic of discussion, as detailed  
24 above. Individually and collectively, Pritzker, Huh, and Valani affirmed this course of action, taking  
25 steps to continue marketing efforts to youth and rejecting efforts by other Board members to curtail  
26 them.

1           846. Also in 2018, when concern grew about youth vaping, Valani directed JLI's strategy in  
2 responding to such concerns. As directed by Valani, the goal was to debunk studies linking the  
3 company with the youth vaping crisis and to try to focus attention on youth smokers who allegedly had  
4 switched to JUUL—a misinformation campaign designed to stave off regulation or the ban of JUUL  
5 products.

6  
7           847. Likewise, in 2018, Pritzker and Valani were heavily involved in planning sham “youth  
8 prevention” activities, whereby JLI would put on seminars for school children that ostensibly were  
9 designed to prevent youth vaping, but which actually told school children that vaping was safe and  
10 even taught children how to use the product.

11           848. Pritzker was heavily involved in JLI's public relations activities, including granular  
12 detail such as directing responses to particular inquiries from teachers. Along with Valani, Pritzker also  
13 approved a press release in response to an inquiry by U.S. Senators, falsely detailing JLI's alleged  
14 youth vaping prevention efforts.

15  
16           849. Pritzker and Valani each edited and revised press releases about JLI's youth prevention  
17 activities and steps it claimed to be taking to prevent youth sales, and they approved CEO Kevin  
18 Burn's op-ed to the Washington Post claiming that the company did not want to sell to youth and was  
19 only targeting adult smokers.

20  
21           850. The five individual Defendants caused false and misleading advertising to be distributed  
22 over television and the internet, to give the impression that JLI's product was a smoking cessation  
23 device and that JLI never marketed to youth.

24           851. Valani and Pritzker routinely approved the copy for JUUL advertising spots. For  
25 example, Kevin Burns sought Pritzker and Valani's approval of the fraudulent “*Make the Switch*”  
26 advertising campaign, which was distributed over the mail and wires.

1           852. The *Make the Switch* campaign featured former smokers aged 37 to 54 discussing how  
2 JUUL helped them quit smoking. According to JLI's Vice President of Marketing, the "*Make the*  
3 *Switch*" campaign was "an honest, straight down the middle of the fairway, very clear communication  
4 about what we're trying to do as a company." But these statements were false, as JUUL was not  
5 intended to be a smoking cessation device.  
6

7           853. Defendant Altria Group's subsidiaries Philip Morris USA and AGDC continued this  
8 scheme by transmitting the fraudulent "*Make the Switch*" advertisements in packs of its combustible  
9 cigarettes. These advertisements falsely portrayed the JUUL product as a smoking cessation device for  
10 adults. Defendant Altria Client Services did the same by e-mailing and mailing out hundreds of  
11 thousands of "Make the Switch" advertisements, with the approval and consent of Altria Group.  
12

13           854. Monsees perpetuated the myth that JUUL was designed as a smoking cessation device,  
14 even though it was designed to appeal to young nonsmokers. Monsees testified before congress that  
15 JUUL was an "alternative" to traditional "cessation products" that "have extremely low efficacy."  
16

17           855. In response to a direct question about whether people buy JUUL to stop smoking,  
18 Defendant Monsees responded: "Yes. I would say nearly everyone uses our product as an alternative to  
19 traditional tobacco products."<sup>942</sup>  
20

21           856. These statements were false, and Monsees knew that they were false, as JUUL was not  
22 intended as a smoking cessation device.  
23

24           857. Monsees also committed mail or wire fraud by giving the following written testimony  
25 to Congress, which was false: "We never wanted any non-nicotine user, and certainly nobody under  
26 the legal age of purchase, to ever use JLI products. ... That is a serious problem. Our company has no  
27 higher priority than combatting underage use."  
28

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<sup>942</sup> *Id.*

1           858. Monsees further committed mail or wire fraud with a false statement, through JLI's  
2 website, that: "We have no higher priority than to prevent youth usage of our products which is why  
3 we have taken aggressive, industry leading actions to combat youth usage." In reality, the RICO  
4 Defendants, through JLI, knowingly and intentionally marketed its product to youth users.

5           859. Beginning in October 2018, both Altria and JLI transmitted false and misleading  
6 communications to the public and the federal government, including Congress and the FDA, in an  
7 attempt to stave off regulation of the JUUL product.

8           860. As detailed above, each RICO Defendant directed and participated in these fraudulent  
9 schemes, either directly or indirectly, with specific intent to defraud, and used JLI as a vehicle to carry  
10 out this pattern of racketeering activity.

11  
12                   **c. "Pattern of Racketeering Activity"**

13           861. The RICO Defendants did willfully or knowingly conduct or participate in, directly or  
14 indirectly, the affairs of the Enterprise through a pattern of racketeering activity within the meaning of  
15 18 U.S.C. §§ 1961(1), 1961(5) and 1962(c), and employed the use of the mail and wire facilities, in  
16 violation of 18 U.S.C. § 1341 (mail fraud) and § 1343 (wire fraud).

17           862. Specifically, the RICO Defendants—individually and collectively—have committed,  
18 conspired to commit, and/or aided and abetted in the commission of, at least two predicate acts of  
19 racketeering activity (i.e., violations of 18 U.S.C. §§ 1341 and 1343), within the past ten years, as  
20 described herein.

21           863. The multiple acts of racketeering activity that the RICO Defendants committed, or  
22 aided or abetted in the commission of, were related to each other, pose a threat of continued  
23 racketeering activity, and therefore constitute a "pattern of racketeering activity."  
24  
25  
26  
27

1           864. The RICO Defendants used, directed the use of, and/or caused to be used, thousands of  
2 interstate mail and wire communications in service of the Enterprise's objectives through common  
3 misrepresentations, concealments, and material omissions.

4           865. As described above, the RICO Defendants devised and knowingly carried out material  
5 schemes and/or artifices to defraud the public and deceive regulators by (1) transmitting  
6 advertisements that fraudulently and deceptively omitted any reference to JUUL's nicotine content or  
7 potency (or any meaningful reference, where one was made); (2) causing false and misleading  
8 statements regarding the nicotine content of JUUL pods to be posted on the JLI website; (3) causing  
9 thousands, if not millions, of JUUL pod packages containing false and misleading statements regarding  
10 the nicotine content of JUUL pods to be transmitted via U.S. mail; (4) representing to users and the  
11 public at-large that JUUL was created and designed as a smoking cessation device; (5) misrepresenting  
12 the nicotine content and addictive potential of its products; (6) making fraudulent statements to the  
13 FDA to persuade the FDA to allow mint flavored JUUL pods to remain on the market; and (7) making  
14 fraudulent statements to the public (including through advertising), the FDA, and Congress to prevent  
15 prohibition of JUUL cigarettes, as was being contemplated in light of JLI's role in the youth vaping  
16 epidemic.  
17

18  
19           866. The RICO Defendants committed these racketeering acts intentionally and knowingly,  
20 with the specific intent to defraud and to personally or directly profit from these actions.  
21

22           867. The RICO Defendants' predicate acts of racketeering (18 U.S.C. § 1961(1)) include, but  
23 are not limited to:

24           A. Mail Fraud: the Enterprise violated 18 U.S.C. § 1341 by sending or receiving, or by  
25 causing to be sent and/or received, fraudulent materials via U.S. mail or commercial  
interstate carriers for the purpose of deceiving the public, regulators, and Congress.

26           B. Wire Fraud: the Enterprise violated 18 U.S.C. § 1343 by transmitting and/or  
27 receiving, or by causing to be transmitted and/or received, fraudulent materials by  
wire for the purpose of deceiving the public, regulators, and Congress.  
28



868. As explained above, the RICO Defendants conducted the affairs of the Enterprise through a pattern of racketeering activity by falsely and misleadingly using the mails and wires in violation of 18 U.S.C. § 1341 and § 1343. To the extent that JLI itself or a JLI officer other than one or more of the RICO Defendants made a particular statement listed below, the five individual Defendants who controlled JLI and Altria caused those statements to be made through their control of JLI and through their control of the communications that JLI was disseminating to the FDA, to Congress, and to the general public in connection with directing the affairs of JLI. As detailed above, these statements are alleged to be part of the fraudulent schemes masterminded by the RICO Defendants who conducted the affairs of JLI.

869. Illustrative and non-exhaustive examples include the following:

From	To	Date	Description
<i>Statements Omitting Reference to JUUL's Nicotine Content (see Section IV.E)</i>			
JLI	Public (via television, internet, and mail)	2015	"Vaporized" Campaign, and other advertising campaigns transmitted via the mails and wires which targeted under-age vapers and omitted any reference to JUUL's nicotine content.
JLI	Members of the public on JLI's email distribution list	June 2015 to April 7, 2016	171 promotional emails were sent to members of the public with no mention of JUUL nicotine content. For example, on July 11, 2015, JLI, following the marketing plan directed and approved by the Management Defendants, sent an email via the wires in interstate commerce from JUUL's email address to people who had signed up from JUUL emails, including youth. This email advertised JUUL's promotion events and said "Music, Art, & JUUL. What could be better? Stop by and be gifted a free starter kit." This email did not mention that JUUL contained nicotine nor that JUUL or the free starter kits were only for adults.

JLI	Public (via internet – Twitter)	June 2015 to October 6, 2017	JLI's Twitter feed, @JUULvapor, and its 2,691 tweets, did not contain a nicotine warning. For example, on August 7, 2015, the @JUULvapor Twitter account published a tweet advertising the Cinespia "Movies All Night Slumber Party" and captioned it "Need tix for @cinespia 8/15? We got you. Follow us and tweet #JUULallnight and our faves will get a pair of tix!" This tweet was delivered via the wires in interstate commerce to members of the public, including followers of JLI's Twitter Feed, which included youth. This tweet did not mention that JUUL contained nicotine.
JLI	Public (via internet – Twitter)	July 28, 2017	The @JUULvapor Twitter account published a tweet, showing an image of a Mango JUULpod next to mangos, and captioned "#ICYMI: Mango is now in Auto-ship! Get the #JUULpod flavor you love delivered & save 15%. Sign up today." This tweet was delivered via the wires in interstate commerce to members of the public, including followers of JLI's Twitter Feed, which included youth. This tweet did not mention that JUUL contained nicotine.
JLI	Public (via internet – Twitter)	August 4, 2017	The @JUULvapor Twitter account published a tweet promoting Mint JUULpods with an image stating "Beat The August Heat with Cool Mint" and "Crisp peppermint flavor with a pleasant aftertaste," captioned "A new month means you can stock up on as many as 15 #JUULpod packs. Shop now." This tweet was delivered via the wires in interstate commerce to members of the public, including followers of JLI's Twitter Feed, which included youth. This tweet did not mention that JUUL contained nicotine.
JLI	Public (via internet – Twitter)	August 28, 2017	The @JUULvapor Twitter account published a tweet comparing JUULpods to dessert with an image and stating "Do you brulee? RT if you enjoy dessert without a spoon with our Crème Brulee #JUULpods." This tweet was delivered via the wires in interstate commerce to members of the public, including followers of JLI's Twitter Feed, which included youth. This tweet did not mention that JUUL contained nicotine.
<b><i>Statements that JUUL is a Cessation Device (see Section IV.D.4)</i></b>			
JLI	Public (via internet – Twitter)	July 5, 2017	The @JUULvapor Twitter account published a tweet stating "Here at JUUL we are focused on driving innovation to eliminate cigarettes, with the corporate goal of improving the lives of the world's one billion adult smokers."

JLI	Public (via internet – JLI Website)	April 25, 2018 (or earlier) to Present	“JUUL Labs was founded by former smokers, James and Adam, with the goal of improving the lives of the world’s one billion adult smokers by eliminating cigarettes. We envision a world where fewer adults use cigarettes, and where adults who smoke cigarettes have the tools to reduce or eliminate their consumption entirely, should they so desire.”
Kevin Burns (former JLI CEO)	Public (via internet – JLI Website)	November 13, 2018	“To paraphrase Commissioner Gottlieb, we want to be the offramp for adult smokers to switch from cigarettes, not an on-ramp for America’s youth to initiate on nicotine.”
JLI	Public (via internet – JLI Website)	September 19, 2019	“JUUL Labs, which exists to help adult smokers switch off of combustible cigarettes.”
Howard Willard (Altria CEO)	Public (via internet – Altria website)	December 20, 2018	“We are taking significant action to prepare for a future where adult smokers overwhelmingly choose non-combustible products over cigarettes by investing \$12.8 billion in JUUL, a world leader in switching adult smokers. ... We have long said that providing adult smokers with superior, satisfying products with the potential to reduce harm is the best way to achieve tobacco harm reduction.”
Howard Willard	FDA (via U.S. mail or electronic transmission of letter to Commissioner Gottlieb)	October 25, 2018	“We believe e-vapor products present an important opportunity to adult smokers to switch from combustible cigarettes.”
<b>Statements Regarding Nicotine Content in JUUL pods (see Section IV.D)</b>			
JLI	Public (via internet – JLI website)	July 2, 2019 (or earlier) to Present	“Each 5% JUUL pod is roughly equivalent to one pack of cigarettes in nicotine delivery.”
JLI	Public (via internet – JLI website)	April 21, 2017	“JUUL pod is designed to contain approximately 0.7mL with 5% nicotine by weight at time of manufacture which is approximately equivalent to 1 pack of cigarettes or 200 puffs.”
JLI; AGDC; Altria Client Services	Public (via U.S. mail distribution of JUUL pod packaging)	2015 to Present	JUUL pod packages (1) claiming a 5% nicotine strength; (2) stating that a JUUL pod is “approximately equivalent to about 1 pack of cigarettes.”
<b>Statements to Prevent Regulation of Mint Flavor (see Sections IV.C.6 and IV.I.2)</b>			

JLI	FDA (via U.S. mail or electronic transmission); Public (via internet – JLI website)	October 16, 2018 (FDA) November 12, 2018 (Public)	JLI's Action Plan that fraudulently characterizes mint as a non-flavored tobacco and menthol product, suggesting that it was a product for adult smokers.
Howard Willard (Altria Group CEO)	FDA (via U.S. mail or electronic transmission of letter to Commissioner Gottlieb)	October 25, 2018	Letter from H. Willard to FDA fraudulently representing mint as a non-flavored tobacco and menthol product, suggesting that it was a product for adult smokers.
JLI	FDA (via U.S. mail or electronic transmission)	November 5, 2018	Fraudulent youth prevalence study transmitted by JLI to the FDA.
<b><i>Statements to Prevent Ban on JUUL Products or Overwhelming Public Outcry (see Sections IV.D.4 and IV.E.14)</i></b>			
JLI	Public (via Television)	January 2019	\$10 million "Make the Switch" advertising campaign, which was designed to deceive the public and regulators into believing that JLI was only targeting adult smokers with its advertising and product, and that JUUL was a smoking cessation product.
AGDC; Philip Morris; JLI	Public (via inserts in combustible cigarette packs)	December 2018 - Present	"Make the Switch" advertising campaign, for the purpose of deceiving smokers into believing that JUUL was a cessation product.
Altria Client Services; JLI	Public (via direct mail and email campaigns)	December 2018 – Present	"Make the Switch" advertising campaign, for the purpose of deceiving smokers into believing that JUUL was a cessation product.
JLI Chief Administrative Officer	Public (via interview with later posted on internet)	December 14, 2017	"It's a really, really important issue. We don't want kids using our products."
JLI	Public (via internet -social media)	March 14, 2018	"We market our products responsibly, following strict guidelines to have material directly exclusively toward adult smokers and never to youth audiences."

JLI	FDA (via U.S. mail or electronic transmission); Public (via internet – JLI website)	October 16, 2018 (FDA)  November 12, 2018 (Public)	“We don’t want anyone who doesn’t smoke, or already use nicotine, to use JUUL products. We certainly don’t want youth using the product. It is bad for public health, and it is bad for our mission. JUUL Labs and FDA share a common goal – preventing youth from initiating on nicotine. ... Our intent was never to have youth use JUUL products.”
Then-CEO of JLI (Kevin Burns)	Public (via interview with CNBC – later posted on internet)	July 13, 2019	“First of all, I’d tell them that I’m sorry that their child’s using the product. It’s not intended for them. I hope there was nothing that we did that made it appealing to them. As a parent of a 16-year-old, I’m sorry for them, and I have empathy for them, in terms of what the challenges they’re going through.”
JLI	Public (via internet – JLI website)	August 29, 2019	“We have no higher priority than to prevent youth usage of our products which is why we have taken aggressive, industry leading actions to combat youth usage.”
James Monsees	Public (via statement to New York Times – later posted on internet)	August 27, 2019	Monsees said selling JUUL products to youth was “antithetical to the company’s mission.”
JLI	Public (via statement to Los Angeles Times – later posted on internet)	September 24, 2019	“We have never marketed to youth and we never will.”
JLI (via counsel)	FDA (via U.S. mail or electronic transmission to Dr. Matthew Holman)	June 15, 2018	Letter from JLI’s Counsel at Sidley Austin to Dr. Matthew Holman, FDA, stating: “JUUL was not designed for youth, nor has any marketing or research effort since the product’s inception been targeted to youth.” and “With this response, the Company hopes FDA comes to appreciate why the product was developed and how JUUL has been marketed — to provide a viable alternative to cigarettes for adult smokers.”
James Monsees	Congress (via U.S. mail or electronic transmission of written testimony)	July 25, 2019	Written Testimony of J. Monsees provided to Congress, stating: “We never wanted any non-nicotine user, and certainly nobody under the legal age of purchase, to ever use JLI products. ... That is a serious problem. Our company has no higher priority than combatting underage use.”

Howard Willard	FDA (via U.S. mail or electronic transmission of letter to Commissioner Gottlieb)	October 25, 2018	“[W]e do not believe we have a current issue with youth access to or use of our pod-based products, we do not want to risk contributing to the issue.”
Howard Willard	Congress (via U.S. mail or electronic transmission of letter to Senator Durbin)	October 14, 2019	“In late 2017 and into early 2018, we saw that the previously flat e-vapor category had begun to grow rapidly. JUUL was responsible for much of the category growth and had quickly become a very compelling product among adult vapers. We decided to pursue an economic interest in JUUL, believing that an investment would significantly improve our ability to bring adult smokers a leading portfolio of non-combustible products and strengthen our competitive position with regards to potentially reduced risk products.”
JLI	Public (via Pam Tighe at CBS News)	October 17, 2016	“Our Marketing Efforts are Adult-targeted. . . Any media is focused on 21+ adult smokers and we always adhere to or exceed all tobacco guidelines for advertising in home, radio and digital.”
Kevin Burns, then-CEO of JLI	Public (via JLI’s website)	April 25, 2018	“Our company’s mission is to eliminate cigarettes and help the more than one billion smokers worldwide switch to a better alternative . . . . We are already seeing success in our efforts to enable adult smokers to transition away from cigarettes and believe our products have the potential over the long-term to contribute meaningfully to public health in the U.S. and around the world. At the same time, we are committed to deterring young people, as well as adults who do not currently smoke, from using our products. We cannot be more emphatic on this point: No young person or non-nicotine user should ever try JUUL.”
Ashely Gould, JLI Chief Administrative Officer	Public (via JLI’s website)	April 25, 2018	“Our objective is to provide the 38 million American adult smokers with meaningful alternatives to cigarettes while also ensuring that individuals who are not already smokers, particularly young people, are not attracted to nicotine products such as JUUL . . . . We want to be a leader in seeking solutions, and are actively engaged with, and listening to, community leaders, educators and lawmakers on how best to effectively keep young people away from JUUL.”

JLI	Public (via JLI's website)	July 24, 2018	"We welcome the opportunity to work with the Massachusetts Attorney General because, we too, are committed to preventing underage use of JUUL. We utilize stringent online tools to block attempts by those under the age of 21 from purchasing our products, including unique ID match and age verification technology. Furthermore, we have never marketed to anyone underage. Like many Silicon Valley technology startups, our growth is not the result of marketing but rather a superior product disrupting an archaic industry. When adult smokers find an effective alternative to cigarettes, they tell other adult smokers. That's how we've gained 70% of the market share. . . . Our ecommerce platform utilizes unique ID match and age verification technology to make sure minors are not able to access and purchase our products online."
JLI	Public (via JLI's website)	July 26, 2018	"We did not create JUUL to undermine years of effective tobacco control, and we do not want to see a new generation of smokers. . . . We want to be part of the solution to end combustible smoking, not part of a problem to attract youth, never smokers, or former smokers to nicotine products. . . . We adhere to strict guidelines to ensure that our marketing is directed towards existing adult smokers."
Adam Bowen	Public (via statement to New York Times – later posted on internet)	August 27, 2018	Bowen said he was aware early on of the risks e-cigarettes posed to teenagers, and the company had tried to make the gadgets "as adult-oriented as possible," purposely choosing not to use cartoon characters or candy names for its flavors.
James Monsees	Public statement (via to <i>Forbes</i> , later published on internet)	November 16, 2018	"Any underage consumers using this product are absolutely a negative for our business. We don't want them. We will never market to them. We never have."
Altria Group	Public (via internet)	December 20, 2018	Statement published in Altria news release stating: "Altria and JUUL are committed to preventing kids from using any tobacco products. As recent studies have made clear, youth vaping is a serious problem, which both Altria and JUUL are committed to solve. As JUUL previously said, 'Our intent was never to have youth use JUUL products.'"



Altria Group	Public (via Earnings Call)	January 31, 2019	“Through JUUL, we have found a unique opportunity to not only participate meaningfully in the e-vapor category but to also support and even accelerate transition to noncombustible alternative products by adult smokers.”
K.C. Crosthwaite, JLI’s CEO	Public (via JLI’s website)	September 25, 2019	“I have long believed in a future where adult smokers overwhelmingly choose alternative products like JUUL. That has been this company’s mission since it was founded, and it has taken great strides in that direction.”
JLI	Public (via JLI’s website)	March 29, 2020	“JUUL was designed with adult smokers in mind.”

870. The mail and wire transmissions described herein were made in furtherance of the RICO Defendants’ schemes and common course of conduct, thereby increasing or maintaining JLI’s market share. The sections cross-referenced in the chart detail how the RICO Defendants caused such mailings or transmissions to be made. As described in those detailed factual allegations, the RICO Defendants did so either by directly approving certain fraudulent statements or by setting in motion a scheme to defraud that would reasonably lead to such fraudulent statements being transmitted via the mail and wires.

871. As described above, the RICO Defendants used JLI to further schemes to defraud the public and deceive regulators, to continue selling nicotine products to youth, and to protect their market share by denying that JLI marketed to youth and claiming that JUUL was created and designed as a smoking cessation device (or a mitigated risk product).

872. The RICO Defendants used these mail and wire transmissions, directly or indirectly, in furtherance of this scheme by transmitting deliberately false and misleading statements to the public and to government regulators.

873. The RICO Defendants had a specific intent to deceive regulators and defraud the public. For example, as alleged above, JLI made repeated and unequivocal statements through the wires and mails that it was not marketing to children and that its products were designed for adult smokers. These

1 statements were false. Each of the RICO Defendants knew these statements were false but caused these  
2 statements to be made anyway. Similarly, the RICO Defendants caused to be transmitted through the  
3 wires and mails false and misleading statements regarding the nicotine content in JUUL pods, which  
4 JLI's own internal data, and Altria's own pharmacokinetic studies, showed were false. Moreover, each  
5 of the Enterprise Defendants had direct involvement in marketing statements by JLI and thus caused  
6 such statements to be made, notwithstanding that they knew they were false for the reasons detailed  
7 above.  
8

9 874. The RICO Defendants intended the public and regulators to rely on these false  
10 transmissions, and this scheme was therefore reasonably calculated to deceive persons of ordinary  
11 prudence and comprehension.  
12

13 875. The public and government regulators relied on the Enterprise's mail and wire fraud.  
14 For example, the regulators, including the FDA, relied on the Enterprise's statements that mint was not  
15 an appealing flavor for nonsmokers in allowing mint JUUL pods to remain on the market. Regulators  
16 also relied on the Enterprise's statements that it did not market to youth in allowing the RICO  
17 Defendants to continue marketing and selling JUUL. Congress likewise relied on the Enterprise's  
18 statements in not bringing legislation to recall or ban e-cigarettes, despite the calls of members of both  
19 parties to do just that. And, the public relied on statements (or the absence thereof) that were  
20 transmitted by the RICO Defendants regarding the nicotine content in and potency of JUUL pods in  
21 deciding to purchase JUUL products.  
22

23 876. Many of the precise dates of the fraudulent uses of the U.S. mail and interstate wire  
24 facilities have been deliberately hidden and cannot be alleged without access to the RICO Defendants'  
25 books and records. Plaintiff has, however, described the types of predicate acts of mail and/or wire  
26 fraud, including the specific types of fraudulent statements upon which, through the mail and wires, the  
27 RICO Defendants engaged in fraudulent activity in furtherance of their overlapping schemes.  
28

1           877. These were not isolated incidents. Instead, the RICO Defendants engaged in a pattern of  
2 racketeering activity by committing thousands of related predicate acts in a five-year period, in the  
3 form of mail and wire fraud, and there remains a threat that such conduct will continue or recur in the  
4 future. That each RICO Defendant participated in a variety of schemes involving thousands of  
5 predicate acts of mail and wire fraud establishes that such fraudulent acts are part of the Enterprise's  
6 regular way of doing business. Moreover, Plaintiff expects to uncover even more coordinated,  
7 predicate acts of fraud as discovery in this case continues.

9                   **d. Plaintiff Has Been Damaged by the Enterprise Defendants' RICO**  
10                   **Violations**

11           878. Plaintiff has been injured by the Enterprise Defendants' conduct, and such injury would  
12 not have occurred but for the predicate acts of those defendants which also constitute the acts taken by  
13 the RICO Defendants in furtherance of their conspiracy pursuant to Section 1962(d). By working to  
14 preserve and expand the market of underage JUUL customers, fraudulently denying JLI's youth-  
15 focused marketing, and deceiving regulators and the public in order to allow JUUL products and mint-  
16 flavored JUULpods to remain on the market, the Enterprise caused the expansion of an illicit e-  
17 cigarette market for youth in Plaintiff's community and caused a large number of youth in Plaintiff's  
18 community to become addicted to nicotine, thus forcing Plaintiff to expend time, money, and resources  
19 to address the epidemic Defendants created through their conduct. Indeed, the Enterprise Defendants  
20 intentionally sought to reach into tribes and schools and deceive public health officials in order to  
21 continue growing JLI's youth customer base. The repeated fraudulent misstatements by the Enterprise  
22 Defendants denying that JLI marketed to youth have served to preserve JUUL's market share—a  
23 market share that is based upon children purchasing JLI's tobacco products.

24           879. Plaintiff was a direct victim of Defendants' misconduct. The Defendants displayed a  
25 wanton disregard for public health and safety by intentionally addicting youth, including youth in  
26

1 Plaintiff's community, to nicotine and then attempting to cover up their scheme in order to maintain  
2 and expand JUUL's market share. Defendants actively concealed that they marketed to youth in order  
3 to avoid public condemnation and to keep their products on the market and continue youth sales. This  
4 forced Plaintiff to shoulder the responsibility for this youth e-cigarette crisis created by Defendants'  
5 misconduct. The harm from the illicit youth e-cigarette market created by Defendants required Plaintiff  
6 to expend its limited financial and other resources to mitigate the health crisis of youth e-cigarette use.  
7 The expansion of this youth e-cigarette market was the goal of the Enterprise and is critical to its  
8 success. Therefore, the harm suffered by Plaintiff because it must address and mitigate the youth e-  
9 cigarette crisis was directly foreseeable and, in fact, an intentional result of Defendants' misconduct.  
10

11       880. The creation and maintenance of this youth e-cigarette market directly harms Plaintiff  
12 by imposing costs on its business and property. Plaintiff's injuries were not solely the result of routine  
13 school district expenses. Instead, as a result of Defendants' misconduct, Plaintiff has suffered property  
14 damage and has been and will be forced to go far beyond what a school district might ordinarily be  
15 expected to pay to enforce the laws and to promote the general welfare in order to combat the youth e-  
16 cigarette crisis. This includes providing new programs and new services as a direct result and in direct  
17 response to Defendants' misconduct. As a result of the conduct of the Enterprise Defendants, Plaintiff  
18 has incurred and will incur costs that far exceed the norm.  
19

20       881. There are no intervening acts or parties that could interrupt the causal chain between the  
21 Defendants' mail and wire fraud and Plaintiff's injuries. Defendants, in furtherance of the Enterprise's  
22 common purpose, made false and misleading statements directly to the public, including Plaintiff, its  
23 employees, and its students. And in the case of fraud on third parties (i.e., FDA and Congress),  
24 causation is not defeated merely because the RICO Defendants deceived a third party into not taking  
25 action where the FDA's and Congress's failure to regulate directly allowed youth in Plaintiff's  
26  
27

1 community to purchase products that should not have been on the market and/or that should not have  
2 been marketed to minors.

3 882. As to predicate acts occurring prior to December 10, 2016, Plaintiff did not discover,  
4 and could not have been aware despite the exercise of reasonable diligence, until shortly before the  
5 initiation of the instant litigation that Defendants transmitted fraudulent statements via the mails and  
6 wires regarding the topics described above including, inter alia, the true nicotine content in and  
7 delivered by JUUL products, such information the Defendants concealed and failed to truthfully  
8 disclose.  
9

10 883. The Enterprise's violations of 18 U.S.C. § 1962(c) have directly and proximately  
11 caused injuries and damages to Plaintiff and Plaintiff is entitled to bring this action for three times its  
12 actual damages, as well as for injunctive/equitable relief, costs, and reasonable attorneys' fees and  
13 costs pursuant to 18 U.S.C. § 1964(c).  
14

15 **2. Violations of 18 U.S.C. § 1962(d)**

16 884. Plaintiff hereby incorporate by reference the allegations contained in the preceding  
17 paragraphs of this complaint.

18 885. Section 1962(d) makes it unlawful for "any person to conspire to violate" Section  
19 1962(c), among other provisions. *See* 18 U.S.C. § 1962(d).  
20

21 886. The RICO Defendants have not undertaken the practices described herein in isolation,  
22 but as part of a common scheme and conspiracy. In violation of 18 U.S.C. § 1962(d), the RICO  
23 Defendants agreed to facilitate the operation of the Enterprise through a pattern of racketeering in  
24 violation of 18 U.S.C. § 1962(c), as described herein. The conspiracy is coterminous with the time  
25 period in which the Enterprise has existed, beginning before JLI was officially formed in 2015 and  
26 continuing to this day (with Defendant Altria joining the conspiracy by at least Spring 2017).  
27

1           887. The RICO Defendants' agreement is evidenced by their predicate acts and direct  
2 participation in the control and operation of the Enterprise, as detailed above in relation to the RICO  
3 Defendants' substantive violation of Section 1962(c). In particular, as described above, Altria's  
4 agreement is shown by the fact that it was well aware of JLI's fraudulent activities in marketing its  
5 products to youth but claiming that it would not do so, yet Altria nonetheless secretly collaborated with  
6 JLI to continue those unlawful activities, and it eventually made a multi-billion dollar investment in  
7 JLI and continued the deception by directing the affairs of JLI.

9           888. The acts in furtherance of the conspiracy attributable to the RICO Defendants include  
10 each of the predicate acts underlying the RICO Defendants' use of the JLI Enterprise to, directly or  
11 indirectly, engage in a pattern of racketeering activity in violation of Section 1962(c), as described  
12 above. Various other persons, firms, and corporations, including third-party entities and individuals not  
13 named as Defendants in this Complaint, have participated as co-conspirators with the members of the  
14 Enterprise in these offenses and have performed acts in furtherance of the conspiracy to increase or  
15 maintain revenue, maintain or increase market share, and/or minimize losses for the Defendants and  
16 their named and unnamed co-conspirators throughout the illegal scheme and common course of  
17 conduct. Where a RICO Defendant did not commit a predicate act itself, it agreed to the commission of  
18 the predicate act.

20           889. Plaintiff was a direct victim of Defendants' misconduct. The Enterprise Defendants'  
21 acts in furtherance of their RICO conspiracy displayed a wanton disregard for public health and safety  
22 by intentionally addicting youth, including youth in Plaintiff's community, to nicotine and then  
23 attempting to cover up their scheme in order to maintain and expand JUUL's market share. Defendants  
24 actively concealed that they marketed to youth in order to avoid public condemnation and to keep their  
25 products on the market and continue youth sales. This forced Plaintiff to shoulder the responsibility for  
26 this youth e-cigarette crisis created by Defendants' misconduct. The harm from the illicit youth e-  
27

1 cigarette market created by Defendants required Plaintiff to expend its limited financial and other  
2 resources to mitigate the health crisis of youth e-cigarette. The expansion of this youth e-cigarette  
3 market was the goal of the Enterprise and is critical to its success. Therefore, the harm suffered by  
4 Plaintiff because it must address and mitigate the youth e-cigarette crisis was directly foreseeable and,  
5 in fact, an intentional result of Defendants' misconduct.  
6

7 890. The creation and maintenance of this youth e-cigarette market, and Defendants actions  
8 in furtherance of their RICO conspiracy, directly harms Plaintiff by imposing costs on its business and  
9 property. Plaintiff's injuries were not solely the result of routine school district expenses. Instead, as a  
10 result of Defendants' misconduct, Plaintiff has suffered property damage and has been and will be  
11 forced to go far beyond what a school district might ordinarily be expected to pay to enforce the laws  
12 and to promote the general welfare in order to combat the youth e-cigarette crisis. This includes  
13 providing new programs and new services as a direct result and in direct response to Defendants'  
14 misconduct. As a result of the conduct of the Enterprise Defendants, Plaintiff has incurred and will  
15 incur costs that far exceed the norm.  
16

17 891. There are no intervening acts or parties that could interrupt the causal chain between the  
18 RICO Defendants' mail and wire fraud acts in furtherance of their RICO conspiracy and Plaintiff's  
19 injuries. The RICO Defendants, in furtherance of their conspiracy to form the Enterprise and advance  
20 its common purpose, made false and misleading statements directly to the public, including Plaintiff,  
21 its employees, and its students. And in the case of fraud on third parties (i.e., FDA and Congress),  
22 causation is not defeated merely because the RICO Defendants deceived a third party into not taking  
23 action where the FDA's and Congress's failure to regulate directly allowed youth in Plaintiff's  
24 community to purchase products that should not have been on the market and/or that should not have  
25 been marketed to minors.  
26  
27



892. As to predicate acts undertaken in furtherance of the conspiracy which occurred prior to December 10, 2016, Plaintiff did not discover, and could not have been aware despite the exercise of reasonable diligence, until shortly before the initiation of the instant litigation that the RICO Defendants transmitted fraudulent statements via the mails and wires regarding the topics described above including, inter alia, the true nicotine content in and delivered by JUUL products, such information the RICO Defendants concealed and failed to truthfully disclose.

893. The Enterprise's violations of 18 U.S.C. § 1962(d) have directly and proximately caused injuries and damages to Plaintiff and Plaintiff is entitled to bring this action for three times its actual damages, as well as for injunctive/equitable relief, costs, and reasonable attorneys' fees and costs pursuant to 18 U.S.C. § 1964(c).

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment as follows:

894. Entering an Order that the conduct alleged herein constitutes a public nuisance under Washington law;

895. Entering an Order that Defendants are jointly and severally liable;

896. Entering an Order requiring Defendants to abate the public nuisance described herein and to deter and/or prevent the resumption of such nuisance;

897. Enjoining Defendants from engaging in further actions causing or contributing to the public nuisance as described herein;

898. Awarding equitable relief to fund prevention education and addiction treatment;

899. Awarding actual and compensatory damages;

900. Awarding statutory damages in the maximum amount permitted by law;

901. Awarding reasonable attorneys' fees and costs of suit;

902. Awarding pre-judgment and post-judgment interest; and

904. Plaintiff hereby demands a trial by jury.

RESPECTFULLY SUBMITTED this 7th day of July, 2022.

## TULALIP TRIBES